# Bothell City Council AGENDA BILL SUMMARY

Meeting Date: November 14, 2017 Action ☐ No Action ☐ AB #: 17-179

Subject: Authorize the City Manager to Execute Purchase and Sale Agreement for the Front 9 of Wayne

Golf Course from Forterra NW using an Estimated \$3.4 Million from Unallocated Park Impact

<u>Funds</u>

Budget Impact/Source of Funds: \$3.4 Million Park Impact Fees

Staff Presenter/Department: Tracey Perkosky, Interim Parks and Recreation Director

# **Executive Summary:**

In early 2016, Forterra purchased the Wayne Golf Course for "buy-and-hold" purposes to allow the City to secure financing and purchase the land. In November 2016, the City and Forterra approved a Memorandum of Understanding (Attachment 2) which outlined a future "Framework Agreement" to have mutual approval on the financial and other responsibilities of the parties. However, the Framework was not completed.

In June 2017, Council directed the City Manager to draft a Purchase and Sale Agreement for the land known as the "Wayne Golf Course" and complete a final financing package based on staff's proposed plan. Staff was further directed to return to the Council with a bond financing plan to purchase 81 acres of passive recreation space and eight (8) acres for active uses. Over the past five months, the City, Forterra and the County have contributed countless hours to negotiate the PSAs with a goal of completing the sale by the end of 2017. This acquisition which preserves the majority of the former Wayne Golf Course as open space also poses financial risks and burdens on the City. While working towards an agreement to purchase and preserve the property, staff also continued to explore options that reduced the City's financial burden. An alternative financing strategy has been identified for the Back 9, therefore delaying Council consideration of the Back PSA until December 12, 2017.

The Front 9 property, including a conservation easement area and an active use area, will have a fiscal impact of \$3.6 million and staff is recommending that it be fully funded from Park Impact Fees. This is an estimate since the City has agreed to pay closing costs and actual bank interest/fees. Final numbers will be available at closing. The active use area will have a deed restriction that prohibits certain uses such as residential, manufacturing, office uses or public access through items such as memberships. The existing conservation easement will remain in place, allowing golf and other passive recreation uses rather than further limiting the uses.

After lengthy discussions with the County and Forterra regarding the City's financial obligations and ability to both purchase, maintain and activate the property, King County is proposing to purchase the Conservation Easement over the Back 9 and to complete the process in two transactions. One in 2017 and the other in 2018. This proposal releases the City from the financial

obligation of purchasing the Back 9, except for the underlying fees which totals approximately \$450,000. This new proposed financing strategy saves the City approximately \$3.1 million in purchasing costs and another \$3 million in interest payments for a total savings of over \$6 million.

For the Back 9, staff is seeking direction on what land use limitations stemming from grant funding sources are acceptable.

# Category: New Business

- Staff Presentation
- Council Questions/Discussion
- Direction on Back 9
- Motion to Approve Action
- Council Vote on Action

# **History:**

- January 2016: the Wayne Golf Course committee was formed to discuss acquisition of the Wayne Golf Course. Committee members include the Mayor, two Council members, City staff, King County staff, Forterra staff, and representatives from OneBothell
- April 2016: King County, City of Bothell, and Forterra began grant applications for the acquisition of the front and back 9 areas of the Wayne Golf Course
- November 2016: Council study session on acquisition process
- December 2016: Council approves Memorandum of Understanding; but Framework is not completed
- June 2017: Council directs City Manager to return to Council with a Purchase and Sale Agreement (PSA) and final financing information based on proposed staff plan

#### **Recommended Action:**

- Authorize the City Manager to execute the PSA to purchase the Front 9 using only City funds.
- Provide direction to staff regarding the financing strategy and uses for the Back 9.

#### **Attachments:**

- 1. Staff Report
- 2. Memorandum of Understanding, 2016-201
- 3. Purchase and Sale Agreement Front 9
- 4. 1996 Conservation Easement

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City Manager Approval:		Date: 11/09/2017

# Bothell City Council AGENDA STAFF REPORT

Subject: Authorize the City Manager to Execute Purchase and Sale Agreement for the Front

9 of Wayne Golf Course from Forterra NW using an Estimated \$3.4 Million from

Unallocated Park Impact Funds

Meeting Date: November 14, 2017

Staff Presenter: Tracey Perkosky, Interim Parks and Recreation Director

# **Background**

In early 2016, Forterra purchased the Wayne Golf Course for "buy-and-hold" purposes. The intent was to allow time for the City to arrange financing to purchase the land. The preliminary agreement was laid out in the November 8, 2016 Memorandum of Understanding (MOU) (Attachment 2) between the City, King County and Forterra. An element of this MOU was to create a "Framework" by May 1, 2017, identifying the respective financial and transactional responsibilities. This "Framework" was not completed by the City, County or Forterra staff. As a result, the designation of what costs Forterra (current property owner) was responsible for and what costs the City (proposed future property owner) was responsible for is included in the respective Purchase and Sale Agreements (PSA). There is one PSA for the Front Nine (Attachment 3) and one for the Back 9 which will be brought before Council on December 12, 2017.

On June 20, 2017, Council directed the City Manager to initiate the negotiations for the purchase of the Wayne Golf Course (per the staff proposal). Staff was further directed to return to the Council with a bond financing plan to purchase 81 acres of passive recreation space and eight (8) acres for active uses. Over the past five months, the City, Forterra and the County have contributed countless hours to negotiate the PSAs with a goal of completing the sale by the end of 2017. This acquisition which preserves the majority of the former Wayne Golf Course as open space also poses financial risks and burdens on the City. While working towards an agreement to purchase and preserve the property, staff also continued to explore options that reduced the City's financial burden. An alternative financing strategy has been identified for the Back 9, therefore delaying Council consideration of the Back 9 PSA until December 12, 2017.

This Agenda Bill and Staff Report are requesting consideration and approval for the purchase of the Wayne Golf Course Front 9 PSA. In addition, information on the new financing strategy for the Back 9 is provided for Council's review, comments and direction.

#### Front 9

The Front 9 consists of 49.9 acres of which 4 acres are unencumbered land not covered by the existing 1996 Conservation Easement (Attachment 4). This current easement allows for passive recreation uses and includes a specific exception for golf. These four acres are known as the "Active

Use Area" and there are no limitations on uses, outside of zoning and other regulatory items. In the PSA, the City is agreeing to a Deed Restriction which guides the future uses of the "Active Use Area" on the Front 9:

The City of Bothell is prohibited, in perpetuity, from voluntarily conveying the fee interest in the Property, or any part thereof, and also from placing any encumbrance on any portion of the Property for the purpose of securing indebtedness.

Active Use Area shall:

- (i) ensure the Active Use Area remains available to the general public,
- (ii) be intended to complement and activate the remainder of the Property, and
- (iii) not compromise the natural, scenic, open space, water resources, or recreation values of the remainder of the Property (collectively the "Active Use Area Principles").

The following activities are expressly prohibited, in perpetuity, as not satisfying the Active Use Area Principles:

- Residential uses;
- Manufacturing or other industrial uses;
- Office uses and storage uses other than incidental office spaces and incidental storage areas that are ancillary to a permitted use of the Active Use Area; and
- Uses that restrict public access by imposing membership or similar requirements that serve to prevent public access.

The total cost for the Active Use Area is *estimated* as follows: \$2,649,030 (land), bank interest/fees (\$194,809), transaction fee (\$50,625), and closing costs (\$62,267). The *estimated* total cost for the underlying fee for the Conservation Easement Area is \$350,970 (land), bank interest/fees (\$25,412) and closing costs (\$7,285). Staff recommends using all City funds for an estimated fiscal impact of \$3.4 million. In addition, Senator Palumbo's capital request of \$1 million remains in the state budget which is anticipated to be passed shortly. If granted this amount, the City's financial obligation would be reduced to \$2.4 million.

Staff recommends using available Park Funds to maintain the existing limitations on the easement area as previously agreed to in the 1996 Conservation Easement. This is advantageous as the City has a unique easement which will allow more recreational activities on the land such as golf because an "easement interest" versus a "fee interest" was acquired on the land in 1996. This easement secures a specific set of rights, such as to remove development rights and protect the view corridor.

The City, County and Forterra have secured a total of \$750,000 in grant funding for the Front 9. However, only about \$360,000 of these grants are eligible for the underlying fee for the easement. Use of these grant funds, which include Conservation Futures (CFT) and Salmon Recovery Board (SRFB) would add strict restrictions that would eliminate golf and allow only very limited passive recreation through wood chip trails and no habitat destruction would be permitted. Uses such as a picnics on a blanket or a pick-up family flag football would be prohibited.

Declining these grants would have a fiscal impact of approximately \$360,000, but would permit more passive park uses which will be defined as part of the master planning process. At least \$200,000 of grants (CFT) could be easily transferred to the Back 9 Conservation Easement purchase.

#### Back 9

After lengthy discussions with the County and Forterra regarding the City's financial obligations and ability to purchase, maintain and activate the property, King County is proposing to purchase the Conservation Easement over the Back 9 and to complete the process in two transactions. One in 2017 and the other in 2018. This proposal releases the City from the financial obligation of purchasing the Back 9, except for the underlying fees which totals approximately \$450,000. This new proposed financing strategy saves the City approximately \$3.1 million in purchasing costs and another \$3 million in interest payments for a total savings of over \$6 million.

The source of the funds used by the County for the proposed 2017 Conservation Easement will limit the uses of the land. The 2017 grant sources include Conservation Futures, King County Park Levy and a Cooperative Watershed Management Grant. This will restrict the land use to passive recreation activities such as hiking, bird watching, limited small picnic shelters, and similar items. In addition, paved trails and/or trailhead amenities such as a restroom could be installed as long as the maximum amount of impervious surfaces doesn't exceed 15% through an approved formula. The Cooperative Watershed Management Grant will limit activities and ensure habitat protection along the river or possibly wetlands areas based on the exact land area secured with these funds.

The City has the opportunity, via a future inter-local agreement, to transfer some or all of the Puget Sound Partnership (PSAR) grant to King County for the Back 9 Easement. However this will greatly restrict the uses of more than half of the Back 9 area. With approval from the funder, the restricted land area could be reduced which will also reduce the grant amount. Note that the PSAR grant is subject to final approval during the State Capital Budget process.

King County has offered to design, construct and maintain trail connections from the Burke-Gillman and Sammamish River Trails through the Front and Back 9 areas. These trail connector locations will be mutually agreed upon by the City and County and a separate Inter-Local Agreement will be drafted to clearly define roles and responsibilities. If the more limiting grant sources, such as PSAR or SRFB are used on a large area of the land, then these trail connectors will not be possible.

The 2018 grant sources are unknown and potential land restrictions will be reviewed at a future date. At this time, the County and City would develop an agreement that would allow the City to purchase the 5 Active Use Acres if the City so desires at any point in the future. Cost and process will be negotiated as part of this agreement.

Staff seeks direction on the level of land use restrictions such as passive recreation vs. critical habitat restoration on the Back 9 area.

# Recommendation

- Authorize the City Manager to execute the PSA to purchase the Front 9 using only City funds.
- Provide direction to staff regarding the financing strategy and uses for the Back 9.



# MEMORANDUM OF UNDERSTANDING REGARDING FUTURE ACQUISITION OF THE WAYNE SAMMAMISH RIVERFRONT PROJECT

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into by and between King County, a municipal corporation and political subdivision of the State of Washington (the "County"), the City of Bothell, a municipal corporation and political subdivision of the State of Washington (the "City"), and Forterra NW, a non-profit corporation existing under the laws of the State of Washington ("Forterra"), collectively referred to herein as "The Parties", effective as of November 9, 2016.

#### Recitals.

- A. Forterra is the owner of certain real property commonly known as the Wayne Golf Course, located in the City of Bothell and consisting of approximately 89 acres (the "Property"). The Property is one of the last remaining undeveloped sites within the region's metropolitan core of a scale that can support a combination of community, recreation and habitat benefits. The Property offers a host of public benefit opportunities due to its adjacency to the Burke-Gilman Trail, Blyth Park and one mile of riverfront offering both recreational water access and restoration opportunities for Chinook salmon, kokanee and steelhead trout. The Property is legally described in Exhibit A.
- B. At the urging of the County and the City, Forterra acquired the Property earlier in 2016 in two separate transactions for a total purchase price of \$10,125,000. The goal is that the County and the City, if feasible, will acquire the Property from Forterra no later than the first half of 2019. The current expectation is that the County would acquire a conservation easement on approximately 34 acres of the Back Nine and the City would acquire fee title to both the Front Nine and the Back Nine.
- C. The Parties desire to establish a framework under which Forterra would retain ownership of the Property until such time as King County and/or the City can acquire it. The framework will specify in more detail the specific property interests both the City and County will acquire from Forterra, the specific reimbursement amounts for those property interests, as well as the timeline for those transactions. In order to provide the Parties with an opportunity to agree on that framework, the Parties have entered into this MOU.
- D. The Parties do not anticipate completing their agreement on the framework until the first half of 2017. In connection with the acquisition and ownership of the Property, Forterra has incurred certain costs which it needs to recover in 2016.

#### Agreements.

NOW, THEREFORE, the Parties agree as follows:

- 1. Timeframe for Entering Into a Framework Agreement. The Parties agree to use their best efforts to conclude a framework agreement no later than May 1, 2017.
- 2. Matters to be Covered in Framework Agreement. The Parties shall address at least the following items in the framework agreement:
  - a) Price and Timing: the purchase price that Forterra would accept for the Property which shall be based on the actual amount expended by Forterra to acquire and own the Property plus a transaction fee not to exceed 3% of the purchase price paid by Forterra, as well as the date by which the acquisition is expected to occur.

- b) <u>Limitations on Forterra</u>: the restrictions on Forterra with respect to the disposition of the Property and the duration of those restrictions, it being the intention that, so long as the City and County otherwise meet their obligations under the framework agreement, Forterra be precluded from disposing of the Property for approximately three years from its original acquisition by Forterra.
- c) Payment Obligations of the County and City: the obligation of the County and the City to reimburse Forterra for certain expenses incurred in connection with the ownership of the Property pending the acquisition of the Property.
- d) <u>Fundraising</u>: the collaboration by the Parties in seeking outside funding to facilitate the purchase of the Property by the City and County.
- e) <u>Maintenance of Property</u>: the obligations of Forterra to maintain the Property and otherwise undertake certain responsibilities incident to the ownership of the Property.
- f) <u>Disposition of Property</u>: the disposition of the Property in the event the City and/or County fail to acquire it.
- 3. Initial Reimbursement of Costs and Expenses. Forterra has incurred certain staff costs and project management expenses relating to the acquisition and ownership that have not been reimbursed from other sources totaling \$99,058 and more specifically itemized in Exhibit B. Within thirty (30) days after execution of this MOU and receipt of an invoice from Forterra, the County and City shall pay Forterra such amount, with each responsible for 50% of the amount due. In consideration of this payment, Forterra agrees that it will not enter into any agreement for the sale of, or that would create a material encumbrance upon, any part of the Property for so long as the Parties are continuing to negotiate a framework agreement provided, however, if no framework agreement has been entered into by the Parties on or before May 1, 2017, Forterra shall have no further obligations under this Section 3. The provisions of this Section 3 shall not preclude Forterra from entering into one or more minor boundary line adjustment agreements that Forterra may deem necessary in order to resolve encroachment issues, provided that Forterra shall consult with the County and City prior to finalizing any boundary line adjustment agreements.
- 4. No Obligation to Purchase. Nothing contained in this MOU shall obligate the County or the City to purchase all or any part of the Property, it being understood that any such obligation shall only exist if and to the extent provided for in a written purchase and sale agreement that may hereafter be entered into between Forterra and the County and/or the City.

#### 5. Miscellaneous.

- 5.1. <u>Independent Contractor.</u> The Parties do not intend this MOU to, and nothing contained in this MOU shall, create any partnership, joint venture, buy/sell agreement, agency agreement, brokerage agreement, or employment agreement between the Parties.
- 5.2. No Contract for Purchase and Sale of Real Estate. This MOU is not an agreement for, or a letter of intent regarding, the purchase and sale of real estate. Nothing in this MOU constrains the County or the City as to the provisions of any agreement for the purchase and sale of all or a portion of the Property, and/or the rights or obligations under such an agreement. Participating and engaging in any such agreement shall be in each Party's sole and absolute discretion.

5.3. Entire Agreement. This MOU constitutes the entire agreement of the Parties with respect to the subject matter hereof. This MOU supersedes all prior agreements, letters of intent, proposals, and understandings between the Parties with respect to such matter.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date first above written:

FORTERRA NW  BY  MANUAL TO SEE A SECULIAR ASSESSMENT OF THE PERSON OF TH
Stratogic Enterprises
Date: November 27, 2016
KING COUNTY
By .
Directut, DNRP
Date: November, 2016 //3/2017
CITY OF BOTHELL

Date: November 27, 2016

#### EXHIBIT A

#### Front 9

That portion of the Southeast Quarter of the Southwest Quarter and of the Southwest Quarter of the Southeast Quarter and of the Northwest Quarter of the Southeast Quarter of Section 7, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at a point on the West line of the Southeast Quarter of the Southwest Quarter of said Section 7 a distance of 589.8 feet Southerly from the Northwest corner thereof, measured along the West line of said subdivision, which point is the true point of beginning of the tract herein described;

Thence South 78°29'50" East a distance of 1218.81 feet to a point on the North and South centerline of said Section 7, a distance of 517.83 feet North of the South Quarter corner of said Section 7;

Thence South 41°01'05" East a distance of 613.90 feet;

Thence South 74°52'05" East a distance of 194.53 feet;

Thence North 78°58'55" East a distance of 290.00 feet, more or less, to the centerline of the Sammamish River:

Thence Easterly, along said centerline of the Sammamish River, to the Westerly boundary of State Highway No. 2-A;

Thence Northerly, along said Westerly boundary, to an intersection of said boundary with the East line of the Southwest Quarter of the Southeast Quarter of said Section 7;

Thence Northerly, along said East line, to an intersection with the Southerly boundary of the Northern Pacific Railway right of way;

Thence Northwesterly, along said right of way line, to an intersection with the West line of the Northwest Ouarter of the Southeast Quarter of said Section 7;

Thence Southerly along said West line to the Southwest corner thereof;

Thence Westerly, along the North line of the Southeast Quarter of the Southwest Quarter of said Section 7 to the Northwest corner thereof;

Thence Southerly, along the West line of the Southeast Quarter of the Southwest Quarter of said Section 7 to the true point of beginning;

Except that portion lying Northerly of the Southerly line of the ToIt River Pipe Line right of way; also

Except that portion conveyed to the City of Bothell for street by Statutory Warranty Deed recorded under recording number 8811210335; also

Except that portion of the Southwest Quarter of the Southeast Quarter of said Section 7 described as follows:

Beginning at the Northwest corner of Lot 5, Block 1, Valhalla Division no. 1A, according to the plat thereof, recorded in Volume 67 of Plats, Page(s) 20 and 21, in King County, Washington;

Thence North 79 1929" East along the North line of said Lot 5, a distance of 111.39 feet to the true point of beginning;

Thence continuing North 79°19'29" East along said North line a distance of 33.42 feet to the Northeast corner of said Lot 5, said point being on the left bank of the Sammamish River;

Thence North 15°27'57" East along the Northerly extension of the East line of said Lot 5 to the centerline of the Sammamish River;

Thence Westerly along said centerline a distance of 30 feet, more or less, to a line that bears North 15°27'57" East from the true point of beginning;

Thence South 15°27'57' West to the true point of beginning.

(Also known as Lot B of City of Bothell Lot Line Adjustment Number SPL0006-94, recorded under recording number 9412130643.)

Excepting therefrom that portion conveyed under recording number 9006051095, described as follows:

That portion of the Northwest Quarter of the Southeast Quarter of Section 7, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Commencing at the Quarter Section corner common to Sections 7 and 18, in said Township and Range; Thence along the centerline of said Section 7 North 05°32'00" East 1313.66 feet to a 1/2" iron pin being the true point of beginning;

Thence continuing North 05°32'00" East a distance of 213.53 feet to a 1/2" iron pin, witness corner; Thence North 05°32'00" East a distance of 0.305 feet to the Southerly right of way line of the Burlington Northern Railroad;

Thence along said Southerly right of way line along the arc of a 1587.022 foot radius curve to the right, a distance of 142.095 feet (the long cord of which bears South 59°09'06" East 142.045 feet); Thence South 45°00'00" West 185.00 feet to the center of a Metro sanitary sewer manhole; Thence South

55°47'21' West a distance of 9.70 feet to the true point of beginning.

#### Back 9

#### Parcel A:

That portion of the South Half of the Southeast Quarter of Section 7, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at the Southeast corner of said subdivision;

Thence North 02°33'39" East along the East line of said subdivision to a point where said East line intersects the Southerly line of that portion of the South Half of the Southeast Quarter of said Section 7 conveyed to the City of Seattle for water main by Deed recorded under recording number 5040174, and the Northerly line of the Tolt River Pipe Line right of way as established by Ordinance No. 86134 of the City of Seattle;

Thence Northwesterly along said Southerly line to the centerline of the Sammamish River; Thence Southwesterly along said centerline of the Sammamish River to the East line of the Bothell-Kirkland Road (96th Avenue Northeast);

Thence Southerly along said East line to the South line of said subdivision;

Thence Easterly along said South line to the point of beginning;

Except that portion condemned in King County Superior Court Cause Number 514489 for the Tolt River Pipe Line right of way.

### Parcel B:

That portion of the North 425.54 feet of the Northeast Quarter of the Northeast Quarter of Section 18, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, lying Easterly of the Easterly line of the Bothell-Kirkland Road (96th Avenue Northeast);

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#### Except the following described tract:

Beginning at a point 804.24 feet West and 129.54 feet South of the Northeast corner of said subdivision; Thence West a distance of 560 feet;

Thence South 74°07'20" West a distance of 93.93 feet to the Easterly margin of said Bothell-Kirkland Road;

Thence Southerly along said Easterly margin to the South line of said North 425.54 feet of said subdivision;

Thence East a distance of 526.56 feet;

Thence North a distance of 296 feet, more or less, to the point of beginning.

#### Parcel C:

That portion of the Northwest Quarter of the Northwest Quarter of Section 17, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at the Northwest corner of said subdivision;

Thence South 00°07'40" East along the West line thereof a distance of 641.04 feet;

Thence North 89°14'50' East a distance of 387.47 feet;

Thence Northeasterly along a curve to the right having a radius of 467.31 feet, an arc distance of 159.93 feet to a point of reverse curve;

Thence along a curve to the left having a radius of 230 feet, an arc distance of 300.93 feet to a point of reverse curve;

Thence along a curve to the right having a radius of 430 feet, an arc distance of 184.12 feet, to a point of compound curve;

Thence along a curve to the right having a radius of 50 feet, an arc distance of 78.10 feet, to a point of tangency;

Thence North 89°22'00" East a distance of 69.56 feet;

Thence North 00°38'00" West a distance of 20 feet, more or less, to the North line of said subdivision; Thence South 89°22'00" West along said North line a distance of 633.76 feet, more or less, to the point of beginning;

Except that portion conveyed to the City of Seattle for water main by Deed recorded under recording number 5040174; also

Except that portion condemned in King County Superior Court Cause Number 514489 for the Tolt River Pipe Line right of way.

(Also known as a portion of Lot 1, Block 6, Motor Crest Villa Tracts, according to the unrecorded plat thereof.)

#### Parcel D:

That portion of the Northeast Quarter of the Northeast Quarter of Section 18, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at a point 804.24 feet West and 129.54 feet South of the Northeast corner of said Section 18; Thence West a distance of 560.00 feet;

Thence South 74°07'20" West a distance of 93.93 feet to the Easterly margin of said Bothell-Kirkland

Thence Southerly along said Easterly margin to the South line of said North 425.54 feet of said subdivision:

Thence East a distance of 526.56 feet;

Thence North a distance of 296 feet, more or less, to the point of beginning;

Except that portion conveyed to the City of Bothell by instrument recorded under recording number 8912121430.

#### Parcel E:

That portion of the Northeast Quarter of the Northeast Quarter of Section 18, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning on the Easterly line of the Bothell-Kirkland Highway at a point 436 feet Northerly, measured along a line parallel with the Easterly line of said subdivision, of the Southerly line of said subdivision; Thence Northeasterly to a point on the Easterly line of said subdivision a distance of 586 feet Northerly of the Southeast corner thereof;

Thence Northerly along said Easterly 320.01 feet;

Thence Westerly parallel with the Southerly line of said subdivision a distance of 1333.51 feet to a stone monument on the Easterly line of said highway;

Thence Southerly along said Easterly line to the point of beginning;

Except that portion of said premises described as follows:

Beginning at the point of beginning above described, which is the Southwest corner of the above described tract;

Thence Northeasterly along the Southerly line of the above described tract, a distance of 234.00 feet;

Thence Northerly at right angles to said Southerly line a distance of 183.00 feet;

Thence Southwesterly a distance of 332.00 feet, more or less, measured along a line parallel with the Southerly line of the above described property, to the Easterly line of the Bothell-Kirkland Highway; Thence Southeasterly along said Easterly line of the Bothell-Kirkland Highway to the point of beginning.

# **EXHIBIT B**

Forterra has incurred certain staff costs and project management expenses relating to the acquisition and ownership that have not been reimbursed from other sources in the following four categories: (i) project strategy (\$400/hour), project direction and negotiation (\$230/hour), project management (\$110/hour), and administrative assistance (\$80/hour).

#### 2015

Category	Hours	Rate	Subtotal
Project Strategy	29.5	\$400.00	\$11,800.00
Project Direction and Negotiation	263.24	\$230.00	\$60,545.20
Project Management	134.75	\$110.00	\$14,822.50
Administrative Assistance	62.40	\$80.00	\$4,992.00
400			\$92,159.70

# 2016

Category	Hours	Rate	Subtotal
Project Strategy	0.0	\$400.00	\$0.00
Project Direction and Negotiation	24.73	\$230.00	\$5,687.90
Project Management	11.00	\$110.00	\$1,210.00
Administrative Assistance	0.0	\$80.00	\$0.00
		300000000000000000000000000000000000000	\$6,897.90

#### PURCHASE AND SALE AGREEMENT - FRONT NINE

This PURCHASE AND SALE AGREEMENT ("<u>Agreement</u>") is entered into by and between the CITY OF BOTHELL, a municipal corporation and political subdivision of the State of Washington, its successors or assigns ("<u>Buyer</u>"), and FORTERRA NW, a Washington non-profit corporation ("<u>Seller</u>"), as of the first date on which both Parties have signed this Agreement (the "<u>Effective Date</u>"). Buyer and Seller are hereafter referred to individually as "Party" and collectively as the "Parties."

#### **RECITALS**

- **A.** Seller owns certain real property in Bothell, King County, Washington, more particularly described on the attached Exhibit A. Seller acquired the Property (as defined below) from WAYNE GOLF COURSE, INC., a Washington corporation ("Original Seller"), pursuant to that certain Purchase and Sale Agreement, dated as of December 16, 2015 and as amended by Amendment Number One, dated February 1, 2016, Amendment Number Two, Dated March 15, 2016, Amendment Number Three, dated March 25, 2016, and Amendment Number Four, dated April 12, 2016 (the "Prior Agreement"), the terms of which are incorporated herein by this reference.
- **B.** Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller, on the terms and conditions set forth in this Agreement.
- **C.** Buyer is the grantee of a Conservation Easement, dated January 1, 1996, with respect to part of the Property, King County Recording No. 9601031097 (the "1996 Conservation Easement").
- **D.** Seller and Richards Enterprises, Inc., a Washington corporation ("<u>Richards Enterprises</u>"), have previously entered into that certain Golf Course Agreement, dated as of February 10, 2016, as amended by Amendment Number One, dated November 14, 2016 (the "<u>Prior Golf Course Agreement</u>"), that was applicable to the Property until September 30, 2017, the terms of which are incorporated herein by this reference.
- **E.** For purposes of this Agreement, the portion of the Property that is not subject to the 1996 Conservation Easement is referred to as the "Active Use Area."
- **F.** Seller has previously transferred part of the land that it had acquired under the Prior Agreement to Leslie and Michael Eggerling pursuant to a Boundary Line Adjustment that was approved by Buyer (the land transferred, including all improvements thereon, referred to herein as the "Eggerling BLA Property").
- **G.** King County, a municipal corporation (the "County"), Buyer and Seller executed a Memorandum of Understanding Regarding Future Acquisition of The Wayne Sammamish Riverfront Project (the "MOU") in November 2016 to set forth the terms related to their respective future property acquisitions, and to set forth the Buyer's and County's initial contributions to the acquisition transaction costs and holding costs for the real property described therein, hereto attached as <a href="Exhibit B">Exhibit B</a>. The MOU included a provision that a Framework Agreement would be executed at a later date specifying the specific property interests both the Buyer and County would acquire from Seller, the specific reimbursement amounts for those property interests, and to set forth the Buyer's and County's additional

contributions to the acquisition transaction costs and holding costs for the property described in the MOU. In lieu of the Framework Agreement, the Buyer, Seller and County determined these items would be best captured in the respective Purchase and Sale Agreements between the Buyer and Seller and between the Seller and the County. Section 3 of this Agreement includes the specific amounts that the Buyer has agreed to reimburse Seller for the acquisition transaction costs and holding costs associated with the Property.

H. Seller and Buyer agree that this purchase is predicated on the following guiding principles: that the Property be open to all, that the use of the Property will complement and support activities consistent with parks and open spaces, that a community visioning process will be used to decide on the ultimate uses of the Property, and that the Buyer's intention is to develop and utilize the Active Use Area in a manner that financially supports the remainder of the Property and other real property being purchased by the Buyer from Seller that is commonly referred to as the Back 9.

Intending to be legally bound, for good and valuable consideration, including the mutual covenants and promises of the Parties, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

- **1. PROPERTY**. The term "Property" as used in this Agreement shall have the same meaning herein as in the Prior Agreement excluding, however, the Eggerling BLA Property.
- **2. PURCHASE.** Seller shall sell and convey the Property to Buyer, and Buyer shall purchase the Property from Seller, on the terms, covenants and conditions set forth in this Agreement. Buyer acknowledges that prior to Closing (as defined below), Buyer shall have inspected the Property. Buyer will be purchasing the Property in its present physical condition, "As Is," except for the express covenants, representations and warranties and indemnities contained in this Agreement. As of the Effective Date, Buyer agrees that Seller has made no representations or warranties or agreements of any kind or nature regarding the Property, except for the express warranties contained in this Agreement.

#### 3. PURCHASE PRICE.

- **3.1. Amount**. Seller fully financed its acquisition of the Property with a loan from ZB,N.A dba THE COMMERCE BANK OF WASHINGTON (the "Bank") with its obligations to the Bank evidenced by that certain Promissory Note, dated May 6, 2016, in the original Principal Amount of \$3,366,000.00 (the "Note"), the terms of which are incorporated herein by this reference. Notwithstanding the original Principal Amount specified in the Note, Seller has advised Buyer that it actually only initially borrowed \$3,011,131.00 with interest thereafter compounded monthly and added to principal. The purchase price ("Purchase Price") for the Property shall be:
- a. For the underlying fee for the portion of the Property subject to the 1996 Conservation Easement (the "Conservation Easement Area") \$350,970.00; and
  - b. For the Active Use Area \$2,649,030.

In addition, the Buyer will also pay into escrow at Closing:

 a. For the Conservation Easement Area, a proportionate share of the actual Bank interest and fees accrued through the Closing Date based on the above allocation of the Purchase Price – estimated to be \$25,412 if interest rates remain at 4.5% through Closing

- b. For the Active Use Area, a proportionate share of the actual Bank interest and fees accrued through the Closing Date based on the above allocation of the Purchase Price estimated to be \$191,809 if interest rates remain at 4.5% through Closing
- c. Buyer shall pay Seller a transaction fee at the time of the Closing. The transaction fee shall be in the amount of \$50,625 except that if the Closing occurs after December 31, 2017 other than due to default by Buyer, the transaction fee shall increase by \$2,500 for every month or part thereof after December 31, 2017 that elapses until the Closing occurs, up to a maximum amount of \$75,938.
- d. Closing costs such as REET, Title Insurance, Escrow Fees, and Recording Fees

The sum of the Purchase Price plus the aggregate amount of Bank interest and fees is referred to as the "Applicable Amount."

- **3.2. Payment**. Buyer shall pay Seller the Purchase Price, other amounts due as provided in Section 3.1 and other agreed to fees at Closing in immediately available funds.
- **3.3 Earnest Money**. In consideration of the terms and conditions of this Agreement, the Parties have agreed that there is no need for earnest money.

#### 4. TITLE.

- **4.1. Condition of Title**. Title shall be insurable by a 2006 ALTA Owner's Standard Coverage Policy in the amount of the Applicable Amount (the "<u>Title Policy</u>") issued by Chicago Title Company of Washington (the "<u>Title Company</u>" or "<u>Escrow Holder</u>"), subject only to the Permitted Exceptions (as defined below). Seller shall satisfy all requirements of the Title Company in connection with issuance of the Title Policy in accordance with the Commitment.
- **4.2. Title Insurance Commitment**. Seller has previously delivered to Buyer a current title insurance commitment issued by the Title Company, showing title to the Property as vested in Seller and committing to insure such title in Buyer by the issuance of the Title Policy. The commitment (or one or more updates thereto) (collectively, the "Commitment") also commits the Title Company to issue such policy endorsements as reasonably required by Buyer.
- 4.3. Review of Title. Buyer shall have ten (10) Business Days after the Effective Date to notify Seller in writing (a "Title Objection Notice") of any objection Buyer in its sole discretion may have to any matter of record shown on the Commitment (the "Title Objections"). General taxes and assessments due after Closing, any items in the Commitment that were identified in Exhibit B to the Statutory Warranty Deed (King County Recording Number 201605310011981) received by Seller under the Prior Agreement, and those matters of record disclosed in the Commitment that Buyer does not disapprove, constitute permitted exceptions ("Permitted Exceptions"). Seller shall have five (5) Business Days from its receipt of a Title Objection Notice to notify Buyer in writing whether Seller commits to cause the Title Objections to be removed or insured against at Closing. If Seller does not commit to remove or provide insurance against any Title Objection, Buyer's sole remedy shall be to either:
  - **a.** proceed with this transaction and, subject to any other conditions or requirements provided for in this Agreement, purchase the Property, and any Title Objections that Seller has not committed to remove or insure over shall be considered Permitted Exceptions; or

**b.** elect not to proceed to purchase the Property and terminate this Agreement, by giving Seller written notice of such election within ten (10) Business Days after receiving Seller's response to the Title Objection Notice, in which case this Agreement shall terminate and neither Seller nor Buyer shall have any further rights or obligations under this Agreement, except such obligations of the Parties that expressly survive the termination of this Agreement.

If Buyer fails to give notice of its election under the immediately preceding sentence within ten (10) Business Days of having received Seller's notice as above provided, Buyer shall be deemed to have elected to proceed with the transaction and purchase the Property. Seller shall immediately notify Buyer of any liens, leases, encumbrances, easements, restrictions, conditions, covenants, rights-of-way and other matters affecting title to the Property that are created and which may appear of record or be revealed by survey or otherwise after the date of the Commitment but before the Closing (collectively, "Intervening Exceptions"). Exceptions shall be subject to Buyer's approval and Buyer shall have ten (10) Business Days after notice in writing of any Intervening Exception, together with a description thereof and a copy of the instrument creating or evidencing the Intervening Exception, if any, to either accept it (whereupon the Intervening Exception shall become a Permitted Exception) or submit written objection. Seller will promptly remove all Intervening Exceptions that do not become Permitted Exceptions. Notwithstanding any provision of this Section 4.3 to the contrary, the following are not considered Permitted Exceptions and must be removed by Seller at or prior to Closing: (i) liens and security interests securing loans obtained by Seller; (ii) any other monetary liens or security interests; and (iii) all taxes and assessments due and payable for or applicable to any period prior to the Closing.

#### 5. CONDITIONS PRECEDENT.

- **5.1. Conditions to Purchase**. Buyer's obligations with respect to the purchase of the Property and the Closing are subject to fulfillment of the conditions precedent ("Buyer's Conditions Precedent") described below, or waiver thereof by Buyer, not later than the Closing Date:
  - **a. Title Policy.** All requirements set forth in the Commitment (including any update) shall have been satisfied or waived by the Title Company and the Title Company shall be prepared to issue the Title Policy.
  - **b. No Actions or Proceedings.** There is no action, proceeding or investigation by any governmental entity other than Buyer, whether in the nature of eminent domain or otherwise, pending or threatened, with respect to the title, ownership, maintenance, use or operation of the Property.
  - c. Representations, Warranties and Covenants of Seller. Seller shall have performed each and every obligation to be performed by Seller under this Agreement, and Seller's representations and warranties in this Agreement shall be true and correct as of the Closing.
  - **d. No Adverse Changes.** There shall have been no material and adverse change in the physical condition of the Property since the Effective Date.
  - **e. No Seller Bankruptcy.** There shall not have been filed against or by Seller a petition in bankruptcy or insolvency or a petition seeking to affect any plan or

other arrangement with creditors or seeking the appointment of a receiver unless it shall have been discharged or dismissed before Closing. No receiver or liquidator has been appointed for all or substantially all of Seller's property. Seller shall not have made an assignment for the benefit of creditors or taken or had taken against it any other similar action for the benefit or protection of creditors.

- **5.2. Benefit of Buyer.** The Buyer's Conditions Precedent are solely for the benefit of Buyer and may be waived only in writing by Buyer. Buyer shall at all times have the right to waive any condition. The waiver by Buyer of any condition in any specific circumstances shall not be a waiver of such condition with respect to any other circumstances or a waiver of any other condition and shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller, unless the waiver expressly so provides.
- **5.3. Termination.** If any of Buyer's Conditions Precedent is not timely fulfilled and is not waived by Buyer, Buyer may terminate this Agreement by written notice to Seller and Escrow Holder in which event any items delivered to the Escrow Holder shall be returned to the Party who delivered it, and neither Party shall have any further rights or obligations under this Agreement other than those obligations which are expressly provided as surviving the termination of this Agreement.

#### 6. INVESTIGATION OF THE PROPERTY.

- **6.1. Seller's Initial Deliveries.** Within ten (10) Business Days from the Effective Date, Seller shall, at its sole expense, deliver to Buyer all documents in Seller's possession or control relating to the ownership or operation of the Property including documents received by Seller as part of the due diligence process provided for in the Prior Agreement and the disclosure form required to be delivered by sellers of real property in accordance with RCW Ch. 64.06 ("Seller's Disclosure Documentation").
- 6.2. Entry. Without limiting any other rights of Buyer under this Agreement, as of the Effective Date, Buyer and Buyer's agents, contractors and employees, subject to the rights of and after legal notice to tenants and at Buyer's sole expense, shall have the right to enter the Property at reasonable times to conduct structural and other inspections and testing including, without limitation, pest, soils, ground water, engineering, environmental and similar tests and assessments. Seller agrees to cooperate with any such investigations, inspections, or studies made by or at Buyer's direction. The exercise by Buyer of any of the preceding rights or any other act of Buyer shall not negate any representation, warranty or covenant of Seller, or modify any of Buyer's rights or Seller's obligations in the event of any breach by Seller of any of its representations, warranties or covenants under this Agreement. Buyer shall indemnify and hold Seller harmless from any and all damages, expense, liens or claims (including attorneys' fees) arising from Buyer's negligence in the exercise of its rights under this Section 6.2 or failure to pay third parties, and the provisions of this indemnity shall survive termination of this Agreement.

**6.3. Period for Investigation.** Buyer's obligation to proceed to Closing is conditioned on Buyer's satisfaction with the Property, the suitability of the Property for Buyer's intended uses and the feasibility of this transaction in Buyer's sole and absolute discretion. Buyer shall have seven days (7) days from the Effective Date to conduct its investigation (the "<u>Due Diligence Period</u>"). If on or before the final day of the Due Diligence Period, Buyer notifies Seller and the Escrow Holder in writing that this condition has not been satisfied, then this Agreement shall be deemed terminated in which event any item delivered to the Escrow Holder shall be returned to the Party who delivered it, and neither Party shall have any further rights or obligations under this Agreement other than those obligations which are expressly provided as surviving the termination of this Agreement. If on or before the final day of the Due Diligence Period, Buyer notifies Seller and the Escrow Holder in writing that this condition has been satisfied or waived, then the Parties shall proceed to Closing (the "<u>Due Diligence Satisfaction Notice</u>"). Failure to provide any notice on or before the final day of the Due Diligence Period shall mean that Buyer has deemed this condition satisfied or waived, and the Parties shall proceed to Closing.

# **7. SELLER'S OBLIGATIONS.** Before the Closing, Seller shall, at its sole expense:

- **7.1.** Promptly notify Buyer upon learning of any fact or event that would make any of the representations or warranties of Seller contained in this Agreement (including, without limitation, Buyer's Conditions Precedent) untrue or misleading in any material respect or that would cause Seller to be in violation of any of its covenants or other obligations hereunder.
- **7.2.** Notify Buyer promptly upon receiving notice of a claim or pending litigation affecting the Property, or notice of any event, transaction, or occurrence before Closing that would materially and adversely affect the Property or any part thereof.
- **7.3.** With respect to the Property or any interest therein or part thereof, not take any action that will adversely affect title including, without limitation, convey, mortgage, grant a deed of trust, abandon, relinquish, cloud or encumber title, or contract to do any of the foregoing or consent to any of the foregoing.
- **7.4.** Operate the Property and maintain its business records in the same manner as before the making of this Agreement, the same as though Seller were retaining the Property. Notwithstanding the foregoing but subject to Section 7.5, without the prior consent of Buyer which shall not be unreasonably withheld, Seller shall not enter into or modify existing rental agreements or leases, service contracts or other agreements relating to the operation or ownership of the Property.
- **7.5.** Maintain and, if necessary, renew, all casualty, liability and hazard insurance policies currently in force with respect to the Property through the Closing without diminution in coverage.

#### 8. Deliveries to Escrow Holder.

- **8.1. By Seller.** Seller shall deliver or cause to be delivered to Escrow Holder on or prior to the Closing Date the following items, the delivery of each of which shall be a condition to the performance by Buyer of its obligations under this Agreement:
  - a. Deed and Other Conveyance Documents. A statutory warranty deed, in form and substance reasonably satisfactory to Buyer and its counsel and the Title Company, duly executed and acknowledged by Seller (the "Deed"), together with an

assignment or other appropriate instrument(s) conveying personal property, in form and substance reasonably satisfactory to Buyer and its counsel and duly executed by Seller, conveying to Buyer or its designee fee simple title to the Property, free and clear of all liens, encumbrances, restrictions and easements created by or through Seller, except only the Permitted Exceptions. The Deed shall expressly confirm that the execution and delivery of the Deed to Buyer shall not result in a merger of the fee conveyed by the Deed with any other interest in the Property now or in the future held by the Buyer including, without limitation, the 1996 Conservation Easement. The Deed shall also include the Deed restriction referred to in Section 12.4(d) of this Agreement.

- **b. FIRPTA Affidavit.** A certificate in form and substance reasonably acceptable to Buyer and its counsel, duly executed by Seller, evidencing that Seller is exempt from the withholding requirements of Section 1445 of the Code.
- **c. ALTA Affidavits.** Any affidavits, certifications or instruments, including any lien affidavits or mechanic's lien indemnifications, duly executed and acknowledged by Seller, as reasonably may be required by the Title Company in order to issue the Title Policy.
- **d.** Closing Certificates. A certificate of Seller dated as of the Closing Date certifying that all of Seller's representations and warranties remain true as of the Closing Date and that Seller has performed all of its obligations under this Agreement to be performed on or prior to the Closing Date, or if not, specifying the respect in which any representation or warranty is no longer true or the agreement that has not been performed.
- e. Certificates of Authority. Such certificates as are necessary or reasonably required by Buyer or the Title Company to evidence the authority of Seller and its signatories to execute the instruments to be executed by Seller in connection with this Agreement, and evidence that the execution of such instruments is the official act and deed of Seller.
- **f. Excise Tax Affidavit.** A real estate excise tax affidavit signed by Seller or its agent reasonably satisfactory to the Title Company and Buyer.
- **g. Golf Course Agreements.** An assignment by Seller to Buyer of all of its rights and obligations under the Prior Golf Course Agreement effective as of Closing.
- h. Seller's Closing Costs and Prorations. Cash by federal funds, wire transfer or cashier's check in the amount necessary to pay Seller's Closing costs, if any, and Seller's share of any prorations.
- **8.2.** By Buyer. Buyer shall deliver or cause to be delivered to Escrow Holder on or before the Closing Date, the delivery of each of which shall be a condition to the performance by Seller of its obligations under this Agreement:
  - a. Closing Funds. Cash by federal funds, wire transfer or cashier's check in the amount necessary to pay the Purchase Price and other amounts due from Buyer as provided in this Agreement adjusted to reflect Buyer's share of Closing costs and prorations which have been mutually agreed to in writing.

- **b. Excise Tax Affidavit.** A real estate excise tax affidavit signed by Buyer or its agent reasonably satisfactory to the Title Company and Seller. Obtaining the approval of King County to the continued favorable tax status of the Property as open space is the obligation of the Buyer.
- c. Certificates of Authority. Such certificates as are necessary or reasonably required by Seller or the Title Company to evidence the authority of Buyer and its signatories to execute the instruments to be executed by Buyer in connection with this Agreement, and evidence that the execution of such instruments is the official act and deed of Buyer.

#### 9. CLOSE OF ESCROW.

- **9.1. Time.** The close of escrow (the "Closing") shall occur at the offices of Escrow Holder on a date to be agreed by Buyer and Seller but in any event on or before December 29, 2017 (the "Closing Date"). When all documents and funds have been deposited with Escrow Holder and the Title Company is in a position to issue the Title Policy, Escrow Holder shall immediately proceed with Closing as provided in Section 9.2. The failure of either Seller or Buyer to be in position to close by the Closing Date, without lawful excuse under this Agreement, shall constitute a default by such Party.
  - **9.2. Procedure.** Escrow Holder shall proceed with Closing as follows:
  - **a.** Obtain the release of the Property from any liens described in the Commitment except the Permitted Exceptions.
  - **b.** Pay applicable real estate transfer excise taxes and record the Deed.
    - **c.** Complete the prorations.
    - **d.** Issue and deliver the Title Policy to Buyer.
  - **e.** Deliver to Buyer any other documents deposited by Seller into Escrow that are intended for Buyer.
  - **f.** Deliver the Applicable Amount to the Bank for credit on the Closing Date and the balance of monies in escrow to Seller.
  - **g.** Forward to Buyer and Seller, in duplicate, a separate accounting of all funds received and disbursed for each Party and copies of all executed and recorded or filed documents deposited into escrow, with such recording and filing date endorsed thereon.
- **9.3. Incorporation of Escrow Instructions.** This Agreement shall serve as escrow instructions, and an executed copy of this Agreement shall be deposited by Seller with Escrow Holder following its execution. The Parties shall execute additional escrow instructions if required by Escrow Holder provided that such additional escrow instructions shall not change the terms of this Agreement without mutual agreement of the Parties.

# 9.4. Closing Costs and Prorations.

- a. Closing Costs. Buyer and Seller shall each pay their own attorneys' fees. Buyer shall pay all recording fees, the entire escrow fee, the title insurance premium charged by the Title Company and the real estate transfer excise tax.
- **b. Prorations.** Seller shall be responsible for paying real property taxes, assessments, utilities and operating expenses relating to the Property through the Closing Date. All expenses of the Property, including but not limited to, real property taxes, rents, utility charges, amounts payable under contracts, annual permits and other expenses normal to ownership, use, operation and maintenance of the Property shall be prorated as of 12:01 a.m. on the Closing Date. Buyer and Seller shall reconcile the actual amounts of revenues and expenses upon receipt or payment thereof to the extent those items were prorated or credited at Closing based on estimates.
- c. Rents from Third Parties. Any prepaid rents or unapplied security deposits shall be credited to Buyer. Installments of fixed and minimum rent will be prorated based on collections as of 12:01 a.m. on the Closing Date. Any rents collected by Buyer after the Closing shall first be applied to rentals accruing after the Closing Date and then to any rents due for any period prior to the Closing Date. Seller shall be entitled to pursue any lawful methods of collection of delinquent rents for any period prior to the Closing Date but shall have no right to evict tenants after Closing.
- **d. Golf Course Agreements.** Any amounts paid to Seller under the Prior Golf Course Agreement prior to Closing shall be retained by Seller. Any amounts that are due under the Prior Golf Course Agreement shall be paid to Buyer.
- e. Prior Expenditures. Any bills or invoices received by Buyer after Closing which relate to services rendered or goods delivered to Seller or the Property prior to Closing shall be paid by Seller within 30 days upon presentation of such bill or invoice. Any amount paid by Buyer due to the failure of Seller to promptly satisfy its obligations hereunder shall be reimbursed by Seller together with interest thereon at the rate of 6% per annum from the date paid by Buyer.
- **9.5. Possession.** Possession of the Property shall be delivered to Buyer upon Closing. Seller shall provide Buyer with all such assistance as Buyer may reasonably request in order to implement a smooth transition in possession.
- that its sole contact with the other and with the Property regarding this transaction has been directly with the other Party and has not involved any broker or finder. Seller and Buyer further warrant to each other that no broker or finder can properly claim a right to a commission or finder's fee based upon contacts between the claimant and that Party with respect to the other Party or the Property. Each Party shall indemnify, defend and hold the other Party harmless from and against any loss, cost or expense, including, but not limited to, attorneys' fees and court costs, resulting from any claim for a fee or commission by any broker or finder in connection with the Property and this Agreement resulting from the indemnifying Party's actions. The obligations of the Parties under this Section shall survive the termination of this Agreement.

#### 11. CASUALTY OR CONDEMNATION.

- 11.1. If there is a condemnation of all or part of the Property initiated before Closing other than by Buyer, Seller shall promptly notify Buyer and Buyer shall have the option for ten (10) Business Days following the date the notice is received either to, by notice to Seller: (i) proceed with the Closing, in which event all condemnation proceeds received by Seller prior to Closing shall be paid to Buyer and the right to receive such proceeds not yet received by Seller shall be assigned to Buyer at the Closing, or (ii) terminate this Agreement. Unless this Agreement is terminated and except as to condemnation proceedings initiated by Buyer, Seller shall take no action with respect to any condemnation proceedings without the prior written consent of Buyer.
- 11.2. There shall be no termination of this Agreement as a consequence of any loss or damage by casualty to the Property prior to Closing. In the event of any such loss or damage, Buyer shall decide to what extent it wants the loss or damage repaired and whether it wants Seller to initiate repairs prior to Closing, except that Seller may always undertake emergency repairs it determines are required to protect public safety. Whether requested by Buyer or not, Seller shall not be required to cover the cost of any repairs that exceed Seller's available insurance proceeds. Any insurance proceeds received by Seller as a consequence of a casualty shall be applied by Seller to repairs, or delivered to Buyer at Closing if not applied by Seller prior to Closing. Furthermore, at Closing, Seller shall assign to Buyer the Seller's right to any insurance proceeds not yet received.

#### 12. REPRESENTATIONS, WARRANTIES AND COVENANTS.

- **12.1. Seller's Representations, Warranties and Covenants.** In addition to the representations, warranties and covenants contained elsewhere in this Agreement, Seller, as of the date of this Agreement and as of the Closing Date, makes the following representations, warranties and covenants:
  - a. **Title.** At Closing, Buyer will acquire the entire fee simple estate and right, title and interest in and to the Property, free and clear of all liens, encumbrances, restrictions and easements created by or through Seller, except only the Permitted Exceptions. Any existing financing as to the Property is not subject to any "lock out" or similar covenant which would prevent the lender's lien from being released at Closing.
  - **b.** Agreements to Transfer or Encumber. Seller has neither committed nor obligated itself in any manner whatsoever to sell, lease or encumber the Property or any interest therein to any person or entity other than Buyer.
  - c. Compliance with Law. To the best of Seller's knowledge, the Property complies in all material respects (both as to condition and use) with all applicable statutes, ordinances, codes, rules and regulations of any governmental authority having jurisdiction over the Property (including those related to zoning, building, subdivision, and engineering), including all conditions contained in any certificate of occupancy covering any of the Property. Seller has obtained all required permits or authorizations for such occupancy. Seller has no knowledge of any facts that might give rise to any violation of the foregoing matters.
  - **d. Bankruptcy, Etc.** No bankruptcy, insolvency, rearrangement or similar action involving Seller or the Property, whether voluntary or involuntary, is pending, threatened by a third party, or contemplated by Seller.

- **e. Litigation.** There is no pending, or to the best of Seller's knowledge threatened, judicial, municipal or administrative proceedings with respect to Seller, this transaction or in any manner affecting the Property or in which Seller is or will be a party by reason of Seller's ownership of the Property or any portion thereof.
- **f. Notices.** Seller has not received any notices from any insurance company, governmental agency other than the City, or from any other persons or entities with respect to any violations or other matters concerning the Property.
- **g.** Taxes and Assessments. Other than amounts disclosed by the Commitment, to the best of Seller's knowledge, no other property taxes have been or will be assessed against the Property for the current tax year, and there are no general or special assessments or charges that have been levied, assessed or imposed on or against the Property nor are any pending or threatened.
- h. Good Standing and Due Authority. Seller has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Seller and constitute the Seller's legal, valid and binding obligations enforceable against Seller in accordance with their terms. The consummation by Seller of the sale of the Property is not in violation of or in conflict with nor does it constitute a default under any term or provision of any agreement or instrument to which Seller is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority to which Seller is subject.
- i. **Provide Further Information.** From the Effective Date to the Closing Date, Seller will notify Buyer of each material event of which Seller becomes aware affecting the Property or any part thereof promptly upon learning of the occurrence of such event.
- **12.2. Effect of Buyer's Inspections.** The representations, warranties and covenants made by Seller in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by Buyer or its agents.
- **12.3** Buyer's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants contained elsewhere in this Agreement, Buyer, as of the date of this Agreement and as of the Closing Date, makes the following representations, warranties and covenants:
  - **a. Good Standing.** Buyer is a Washington municipal corporation duly organized, validly existing and in good standing under the laws of the State of Washington.
  - **b. Due Authority.** Buyer has all requisite power and authority to execute and deliver this Agreement and to carry out its obligation under this Agreement and the transactions contemplated by this Agreement. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by Buyer and constitute the Buyer's legal, valid and binding obligations enforceable against Buyer in accordance with their terms. The consummation by Buyer of the purchase of the Property

is not in violation of or in conflict with nor does it constitute a default under any term or provision of any agreement or instrument to which Buyer is or may be bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority to which Buyer is subject.

- **12.4** Buyer's Post-Closing Covenants. As an inducement to Seller to convey the Property to Buyer, Buyer covenants and agrees to satisfy the following obligations after Closing:
  - a. Recognition of Efforts. In recognition of the efforts of Forterra NW to facilitate the conservation of the Property, Buyer agrees to provide due acknowledgement of such involvement and efforts on conspicuous, permanent and appropriate signage located on either the Property.
  - **b. Open Space Taxation.** Buyer and Seller acknowledge the Property is classified as "open space" under RCW Ch. 84.34 and by King County and, as such, is subject to certain favorable taxation. Buyer agrees to indemnify Seller from any claims or liabilities for additional taxes due for periods prior to Closing if either the conveyance of the Property to Buyer, or a change in the use of the Property after Closing, results in additional taxes under the terms of the applicable Open Space Taxation Agreement. Buyer's obligations under the preceding sentence shall survive Closing.
  - c. 1996 Conservation Easement. Buyer shall not take any action that would result in a merger of the fee conveyed by the Deed with the property interest of Buyer in the 1996 Conservation Easement. Except as otherwise provided by the express terms of the 1996 Conservation Easement, Buyer shall not otherwise terminate the 1996 Conservation Easement.
  - d. Deed Restriction. Buyer agrees that the Deed will include a Deed restriction that prohibits, in perpetuity, any voluntary conveyance by Buyer of the fee interest in the Property or any part thereof. The Deed Restriction shall further provide as to the Active Use Area that any use(s): (i) shall ensure the Active Use Area remains available to the general public, (ii) are intended to complement and activate the remainder of the Property, and (iii) will not compromise the natural, scenic, open space, water resources and recreational values of the remainder of the Property (collectively the "Active Use Area Principles"). Without intending to limit the uses otherwise permitted and acknowledging that other uses not listed below could readily satisfy the Active Use Area Principles; the following uses are agreed as meeting the Active Use Area Principles:
  - A public golf course, park, open space, playground, ballfield, tennis courts, community center, skating rink, performance venue, arts center, senior center, farmers market, pushcart vendors, renters of recreational equipment (e.g., kayaks, canoes or bicycles) or other retail activities that are intended to activate the remainder of the Property, or a similar facility that provides recreational, educational, cultural or other benefits for the general public.
  - A hotel, motel or similar temporary lodging facility geared towards people taking advantage of the Property.
  - One or more restaurants open to the public.
  - Parking for users of the Property.

The following uses are agreed as not meeting the Active Use Area Principles:

- Residential uses.
- Manufacturing or other industrial uses.
- Office uses and storage uses other than incidental office spaces and incidental storage areas that are ancillary to a permitted use of the Active Use Area.
- Uses that restrict public access by imposing membership or similar requirements that serve to prevent public access.

With the foregoing in mind, the following language in quotation marks will be verbatim incorporated into the Deed as a perpetual restriction on the Property, subject to the Buyer's proper review for conformance. "The City of Bothell is prohibited, in perpetuity, from voluntarily conveying the fee interest in the Property, or any part thereof, and also from placing any encumbrance on any portion of the Property for the purpose of securing indebtedness. Any use(s) within the portion of the Property identified in Exhibit "" hereto [the legal description of the Active Use Area] (the "Active Use Area") shall: (i) ensure the Active Use Area remains available to the general public, (ii) be intended to complement and activate the remainder of the Property, and (iii) not compromise the natural, scenic, open space, water resources, or recreation values of the remainder of the Property (collectively the "Active Use Area Principles"). The following activities are expressly prohibited, in perpetuity, as not satisfying the Active Use Area Principles: Residential uses; Manufacturing or other industrial uses; Office uses and storage uses other than incidental office spaces and incidental storage areas that are ancillary to a permitted use of the Active Use Area; and uses that restrict public access by imposing membership or similar requirements that serve to prevent public access."

- **13. ENVIRONMENTAL COMPLIANCE.** In addition to and without limiting Section 12, Seller warrants, represents, covenants and agrees:
- **13.1. Hazardous Substances.** Seller has not used, generated, manufactured, produced, stored, released, discharged or disposed of on, under, above or about the Property (or off-site of the Property that might affect the Property) or transported to or from the Property, any Hazardous Substance or allowed any other person or entity to do so. Seller has no knowledge nor has Seller observed any questionable practice or conduct indicating that any Hazardous Substance has been used, generated, manufactured, produced, stored, released, discharged or disposed of on, under or above Property (or off-site of the Property that might affect the Property) or transported to or from the Property by any entity, firm or person, or from any source whatsoever.
- **13.2. Pre-Closing Covenant.** Seller will not use, generate, manufacture, produce, store, release, discharge or dispose of on, under, above or about the Property (or off-site of the Property that might affect the Property), or transport to or from the Property, any Hazardous Substance or authorize any other person or entity to do so, prior to Closing.
- 13.3. **Definitions.** The term "<u>Hazardous Substance</u>" includes without limitation (a) those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances", "hazardous wastes" or "solid waste" in any Environmental Law; (b) petroleum products and petroleum byproducts; (c) polychlorinated biphenyls; and (d) chlorinated solvents. The term "Environmental Law" includes any federal, state, municipal or

local law, statute, ordinance, regulation, order or rule pertaining to health, industrial hygiene, environmental conditions or hazardous substances.

#### 14. INDEMNIFICATION.

- 14.1. Seller's Indemnity. Seller shall pay, protect, defend, indemnify and hold Buyer and its successors and assigns harmless from and against any and all loss, liability, damage and expense suffered or incurred by reason of (a) the breach of any representation, warranty or agreement of Seller set forth in this Agreement, or (b) the ownership, maintenance, and/or operation of the Property prior to Closing by Seller including, without limitation, any injuries to persons or property from any cause occasioned in whole or in part by any acts or omissions of Seller, its representatives, employees, contractor or suppliers that occurred before Closing. Seller shall defend any claim covered by this indemnity using counsel reasonably acceptable to Buyer. Buyer shall have no rights under this Section 14.1 in respect of any matter arising as a consequence of any act or omission of Richards Enterprises under the Prior Golf Course Agreement, it being agreed by Buyer that its sole recourse shall instead be against Richards Enterprises exercising the rights under the Prior Golf Course Agreement that are being assigned to Buyer by Seller at Closing.
- **14.2.** Buyer's Indemnity. Buyer shall pay, protect, defend, indemnify and hold Seller and its successors and assigns harmless from and against any and all loss, liability, damage and expense suffered or incurred by reason of the ownership, maintenance, and/or operation of the Property after Closing by Buyer. Buyer shall defend any claim covered by this indemnity using counsel reasonably acceptable to Seller.
- **15. SURVIVAL.** The covenants, agreements, representations, warranties made in this Agreement, and the remedies and indemnities provided for in this Agreement, shall survive the Closing unimpaired and shall not merge into the Deed and the recordation thereof.
- 16. ENTIRE AGREEMENT. This Agreement contains the entire integrated agreement of the Parties, including all of the covenants and conditions between the Parties with respect to the subject matter of this Agreement, and supersedes all prior correspondence, agreements and understandings, both verbal and written. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by Seller and Buyer. The Parties do not intend to confer any benefit under this Agreement to any person, firm or corporation other than the Parties.

# 17. DEFAULT; REMEDIES

- 17.1 Remedies for Default. This Agreement pertains to the conveyance of real property, the unique nature of which is hereby acknowledged by the Parties. Consequently, if either Party defaults under this Agreement or breaches any of the representations, warranties, terms, covenants, conditions or provisions hereof, the other Party shall have, in addition to a claim for damages for such breach or default, and in addition and without prejudice to any other right or remedy available under this Agreement or at law or in equity, the right to specific performance of this Agreement.
- 17.2. Attorneys' Fees. If either Party brings an action or other proceeding against the other Party to enforce any of the terms, covenants or conditions hereof or any instrument executed pursuant to this Agreement, or by reason of any breach or default hereunder or thereunder, the Party prevailing in any such action or proceeding shall be paid all costs and

reasonable attorneys' fees by the other Party, and in the event any judgment is obtained by the prevailing Party all such costs and attorneys' fees shall be included in the judgment.

- 17.3 Golf Course Agreements. Notwithstanding Section 17.1 of this Agreement, Seller shall not be deemed to have made any misrepresentation, breached any warranty or otherwise be in default under this Agreement due to any default or breach by Richards Enterprises under or of the Prior Golf Course Agreement. In accordance with Section 14.1 of this Agreement, Buyer shall have no recourse against Seller as a consequence of any misrepresentation, breach or other default by Richards Enterprise. Instead, Buyer's sole recourse shall be against Richard Enterprises by exercising the rights of Seller under the Prior Golf Course Agreement that are being assigned by Seller to Buyer at Closing.
- **18. Notices.** All notices required to be given pursuant to the terms hereof are required to be in writing and shall be either delivered personally, deposited in the United States mail, certified mail, return receipt requested, postage prepaid, sent by facsimile so long as receipt is confirmed, sent by email so long as receipt is confirmed, and addressed to the addresses listed below with copies to the Parties listed after such address:

#### **B**UYER

City of Bothell 18415 101<sup>st</sup> Ave. NE Bothell, WA 98011 Attn: City Manager

#### Seller

Forterra NW 901 5<sup>th</sup> Ave., Suite 2200 Seattle, WA 98164

Attn: Michelle Connor and Hillary Wilson

mconnor@forterra.org and hwilson@forterra.org

The foregoing addresses may be changed by notice to the other Party as provided herein. Mailed notice properly given shall be deemed received four (4) days after deposit in the mail. Facsimile transmission of any signed original document or notice, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either Party or the Escrow Holder, the Parties will confirm facsimile transmitted signatures by signing an original document.

- 19. PARTIAL INVALIDITY. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- **20. WAIVERS.** No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision in this Agreement. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

- **21. CONSTRUCTION.** Captions are solely for the convenience of the Parties and are not a part of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. If the date on which Buyer or Seller is required to take any action under the terms of this Agreement is not a Business Day, the action shall be taken on the next succeeding Business Day.
- **22. TIME.** Time is of the essence for every provision of this Agreement. As used in this Agreement, the term "<u>Business Days</u>" refers to Monday Friday other than legal holidays in the State of Washington.
- 23. Force Majeure. Performance by Seller or Buyer of their obligations under this Agreement shall be extended by the period of delay caused by force majeure. Force majeure is war, natural catastrophe, strikes, walkouts or other labor industrial disturbance, order of any government, court or regulatory body having jurisdiction, shortages, blockade, embargo, riot, civil disorder, or any similar cause beyond the reasonable control of the Party who is obligated to render performance (but excluding financial inability to perform, however caused). A Party desiring to assert force majeure is required to promptly notify the other Party of the event upon which the assertion will be based and thereafter provide the other Party with such information regarding the event and its duration as the other Party may reasonably request.
- **24. Successors.** The terms, conditions and covenants contained in this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto. Any assignment by a Party shall not relieve the assignor of its obligations under this Agreement.
- **25.** APPLICABLE LAW. This Agreement shall be governed by the laws of the State of Washington.
- **26. RECITALS AND EXHIBITS.** The Recitals and Exhibits are incorporated into this Agreement by this reference.

Remainder of this page left blank intentionally

27. COUNTERPARTS. shall be deemed an original.	This Agreement may be signed in counterparts, any of which
	BUYER:
	CITY OF BOTHELL
	Name: Jennifer Phillips Title: City Manager
	SELLER:
	FORTERRA NW, a Washington nonprofit corporation
	By:
	Name: Eugene Duvernoy Title: President
EXHIBITS:	
A – Legal Description of Propert B – MOU	у

Page 17 of 28

STATE OF WASHINGT	ON ) ) ss.	
COUNTY OF KING		
in and for the State	of Washington, d , to me	2017, before me, the undersigned, a Notary Public uly commissioned and sworn, personally appeared known to be the of The City
acknowledged the s	aid instrument to poses therein me	hat executed the within and foregoing instrument, and be the free and voluntary act and deed of said corporation ntioned, and on oath stated that he/she is authorized to
In WITNESS \and year first above		hereunto set my hand and affixed my official seal the day
		Notary Public in and for said state, residing at My commission expires: Print Name:
STATE OF WASHINGT	TON ) ) ss. )	
in and for the State	of Washington, d	2017, before me, the undersigned, a Notary Public uly commissioned and sworn, personally appeared known to be the of FORTERRA NW,
the Washington non acknowledged the s	profit corporation aid instrument to poses therein me	that executed the within and foregoing instrument, and be the free and voluntary act and deed of said corporation ntioned, and on oath stated that he/she is authorized to
In WITNESS \and year first above		nereunto set my hand and affixed my official seal the day
		Notary Public in and for said state, residing at
		Print Name:

#### EXHIBIT A

#### LEGAL DESCRIPTION

That portion of the Southeast Quarter of the Southwest Quarter and of the Southwest Quarter of the Southeast Quarter and of the Northwest Quarter of the Southeast Quarter of Section 7, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at a point on the West line of the Southeast Quarter of the Southwest Quarter of said Section 7 a distance of 589.8 feet Southerly from the Northwest corner thereof, measured along the West line of said subdivision, which point is the true point of beginning of the tract herein described;

Thence South 78°29'50" East a distance of 1218.81 feet to a point on the North and South centerline of said Section 7, a distance of 517.83 feet North of the South Quarter corner of said Section 7;

Thence South 41°01'05" East a distance of 613.90 feet;

Thence South 74°52'05" East a distance of 194.53 feet;

Thence North 78°58'55" East a distance of 290.00 feet, more or less, to the centerline of the Sammamish River;

Thence Easterly, along said centerline of the Sammamish River, to the Westerly boundary of State Highway No. 2-A;

Thence Northerly, along said Westerly boundary, to an intersection of said boundary with the East line of the Southwest Quarter of the Southeast Quarter of said Section 7;

Thence Northerly, along said East line, to an intersection with the Southerly boundary of the Northern Pacific Railway right of way;

Thence Northwesterly, along said right of way line, to an intersection with the West line of the Northwest Quarter of the Southeast Quarter of said Section 7;

Thence Southerly along said West line to the Southwest corner thereof;

Thence Westerly, along the North line of the Southeast Quarter of the Southwest Quarter of said Section 7 to the Northwest corner thereof;

Thence Southerly, along the West line of the Southeast Quarter of the Southwest Quarter of said Section 7 to the true point of beginning;

Except that portion lying Northerly of the Southerly line of the Tolt River Pipe Line right of way; also Except that portion conveyed to the City of Bothell for street by Statutory Warranty Deed recorded under recording number 8811210335; also

Except that portion of the Southwest Quarter of the Southeast Quarter of said Section 7 described as follows:

Beginning at the Northwest corner of Lot 5, Block 1, Valhalla Division no. 1A, according to the plat thereof, recorded in Volume 67 of Plats, Page(s) 20 and 21, in King County, Washington;

Thence North 79°19'29" East along the North line of said Lot 5, a distance of 111.39 feet to the true point of beginning;

Thence continuing North 79°19'29" East along said North line a distance of 33.42 feet to the Northeast corner of said Lot 5, said point being on the left bank of the Sammamish River;

Thence North 15°27'57" East along the Northerly extension of the East line of said Lot 5 to the centerline of the Sammamish River;

Thence Westerly along said centerline a distance of 30 feet, more or less, to a line that bears North 15°27'57" East from the true point of beginning:

Thence South 15°27'57' West to the true point of beginning.

(Also known as Lot B of City of Bothell Lot Line Adjustment Number SPL0006-94, recorded under recording number 9412130643.)

Excepting therefrom that portion conveyed under recording number 9006051095, described as follows: That portion of the Northwest Quarter of the Southeast Quarter of Section 7, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Commencing at the Quarter Section corner common to Sections 7 and 18, in said Township and Range; Thence along the centerline of said Section 7 North 05°32'00" East 1313.66 feet to a 1/2" iron pin being the true point of beginning;

Thence continuing North 05°32'00" East a distance of 213.53 feet to a 1/2" iron pin, witness corner; Thence North 05°32'00" East a distance of 0.305 feet to the Southerly right of way line of the Burlington Northern Railroad;

Thence along said Southerly right of way line along the arc of a 1587.022 foot radius curve to the right, a

distance of 142.095 feet (the long cord of which bears South 59°09'06" East 142.045 feet);

Thence South 45°00'00" West 185.00 feet to the center of a Metro sanitary sewer manhole;

Thence South 55°47'21' West a distance of 9.70 feet to the true point of beginning;

Except that portion described as follows:

Commencing at the northwest corner of Lot 5, Block 1, Valhalla Division No. 1;

Thence north 79°19′28″ east along the north line of said Lot 5 a distance of 81.89 feet to the point of beginning;

Thence north 42°51′58" east a distance of 40.32 feet;

Thence north 14°25′20" east a distance of 3.15 feet;

Thence north 29°37′00" east a distance of 6.47 feet;

Thence north 62°58'00" east a distance of 8.68 feet;

Thence south 15°27′57" west a distance of 38.09 feet to the north line of said Lot 5;

Thence south 79°19′28" west along said line a distance of 29.50 feet to the point of beginning;

(Also known as Parcel A of City of Bothell B.L.A. City Case Number BLA 2016-08852, recorded under recording number 20170626900001.)

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#### **EXHIBIT B**

# MEMORANDUM OF UNDERSTANDING REGARDING FUTURE ACQUISITION OF THE WAYNE SAMMAMISH RIVERFRONT PROJECT

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into by and between King County, a municipal corporation and political subdivision of the State of Washington (the "County"), the City of Bothell, a municipal corporation and political subdivision of the State of Washington (the "City"), and Forterra NW, a non-profit corporation existing under the laws of the State of Washington ("Forterra"), collectively referred to herein as "The Parties", effective as of November 9, 2016.

#### Recitals.

- A. Forterra is the owner of certain real property commonly known as the Wayne Golf Course, located in the City of Bothell and consisting of approximately 89 acres (the "Property"). The Property is one of the last remaining undeveloped sites within the region's metropolitan core of a scale that can support a combination of community, recreation and habitat benefits. The Property offers a host of public benefit opportunities due to its adjacency to the Burke-Gilman Trail, Blyth Park and one mile of riverfront offering both recreational water access and restoration opportunities for Chinook salmon, kokanee and steelhead trout. The Property is legally described in Exhibit A.
- B. At the urging of the County and the City, Forterra acquired the Property earlier in 2016 in two separate transactions for a total purchase price of \$10,125,000. The goal is that the County and the City, if feasible, will acquire the Property from Forterra no later than the first half of 2019. The current expectation is that the County would acquire a conservation easement on approximately 34 acres of the Back Nine and the City would acquire fee title to both the Front Nine and the Back Nine.
- C. The Parties desire to establish a framework under which Forterra would retain ownership of the Property until such time as King County and/or the City can acquire it. The framework will specify in more detail the specific property interests both the City and County will acquire from Forterra, the specific reimbursement amounts for those property interests, as well as the timeline for those transactions. In order to provide the Parties with an opportunity to agree on that framework, the Parties have entered into this MOU.
- D. The Parties do not anticipate completing their agreement on the framework until the first half of 2017. In connection with the acquisition and ownership of the Property, Forterra has incurred certain costs which it needs to recover in 2016.

# Agreements.

NOW, THEREFORE, the Parties agree as follows:

- 1. *Timeframe for Entering Into a Framework Agreement.* The Parties agree to use their best efforts to conclude a framework agreement no later than May 1, 2017.
- **2.** *Matters to be Covered in Framework Agreement.* The Parties shall address at least the following items in the framework agreement:
  - **a)** <u>Price and Timing</u>: the purchase price that Forterra would accept for the Property which shall be based on the actual amount expended by Forterra to acquire and own

the Property plus a transaction fee not to exceed 3% of the purchase price paid by Forterra, as well as the date by which the acquisition is expected to occur.

- **b)** <u>Limitations on Forterra</u>: the restrictions on Forterra with respect to the disposition of the Property and the duration of those restrictions, it being the intention that, so long as the City and County otherwise meet their obligations under the framework agreement, Forterra be precluded from disposing of the Property for approximately three years from its original acquisition by Forterra.
- c) <u>Payment Obligations of the County and City</u>: the obligation of the County and the City to reimburse Forterra for certain expenses incurred in connection with the ownership of the Property pending the acquisition of the Property.
- **d)** <u>Fundraising</u>: the collaboration by the Parties in seeking outside funding to facilitate the purchase of the Property by the City and County.
- **e)** <u>Maintenance of Property</u>: the obligations of Forterra to maintain the Property and otherwise undertake certain responsibilities incident to the ownership of the Property.
- **f**) <u>Disposition of Property</u>: the disposition of the Property in the event the City and/or County fail to acquire it.
- 3. *Initial Reimbursement of Costs and Expenses.* Forterra has incurred certain staff costs and project management expenses relating to the acquisition and ownership that have not been reimbursed from other sources totaling \$99,058 and more specifically itemized in <a href="Exhibit B">Exhibit B</a>. Within thirty (30) days after execution of this MOU and receipt of an invoice from Forterra, the County and City shall pay Forterra such amount, with each responsible for 50% of the amount due. In consideration of this payment, Forterra agrees that it will not enter into any agreement for the sale of, or that would create a material encumbrance upon, any part of the Property for so long as the Parties are continuing to negotiate a framework agreement <a href="provided">provided</a>, <a href="however">however</a>, if no framework agreement has been entered into by the Parties on or before May 1, 2017, Forterra shall have no further obligations under this Section 3. The provisions of this Section 3 shall not preclude Forterra from entering into one or more minor boundary line adjustment agreements that Forterra may deem necessary in order to resolve encroachment issues, provided that Forterra shall consult with the County and City prior to finalizing any boundary line adjustment agreements.
- 4. **No Obligation to Purchase**. Nothing contained in this MOU shall obligate the County or the City to purchase all or any part of the Property, it being understood that any such obligation shall only exist if and to the extent provided for in a written purchase and sale agreement that may hereafter be entered into between Forterra and the County and/or the City.

#### 5. Miscellaneous.

5.1. <u>Independent Contractor.</u> The Parties do not intend this MOU to, and nothing contained in this MOU shall, create any partnership, joint venture, buy/sell agreement, agency agreement, brokerage agreement, or employment agreement between the Parties.

- 5.2. No Contract for Purchase and Sale of Real Estate. This MOU is not an agreement for, or a letter of intent regarding, the purchase and sale of real estate. Nothing in this MOU constrains the County or the City as to the provisions of any agreement for the purchase and sale of all or a portion of the Property, and/or the rights or obligations under such an agreement. Participating and engaging in any such agreement shall be in each Party's sole and absolute discretion.
- 5.3. <u>Entire Agreement</u>. This MOU constitutes the entire agreement of the Parties with respect to the subject matter hereof. This MOU supersedes all prior agreements, letters of intent, proposals, and understandings between the Parties with respect to such matter.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date first above written:

FORTERRA NW
By
Date: November, 2016
KING COUNTY
By
Date: November, 2016
CITY OF BOTHELL
By
Date: November 2016

#### **EXHIBIT A**

#### Front 9

That portion of the Southeast Quarter of the Southwest Quarter and of the Southwest Quarter of the Southeast Quarter and of the Northwest Quarter of the Southeast Quarter of Section 7, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at a point on the West line of the Southeast Quarter of the Southwest Quarter of said Section 7 a distance of 589.8 feet Southerly from the Northwest corner thereof, measured along the West line of said subdivision, which point is the true point of beginning of the tract herein described;

Thence South 78°29'50" East a distance of 1218.81 feet to a point on the North and South centerline of said Section 7, a distance of 517.83 feet North of the South Quarter corner of said Section 7;

Thence South 41°01'05" East a distance of 613.90 feet;

Thence South 74°52'05" East a distance of 194.53 feet;

Thence North 78°58'55" East a distance of 290.00 feet, more or less, to the centerline of the Sammamish River:

Thence Easterly, along said centerline of the Sammamish River, to the Westerly boundary of State Highway No. 2-A;

Thence Northerly, along said Westerly boundary, to an intersection of said boundary with the East line of the Southwest Quarter of the Southeast Quarter of said Section 7:

Thence Northerly, along said East line, to an intersection with the Southerly boundary of the Northern Pacific Railway right of way;

Thence Northwesterly, along said right of way line, to an intersection with the West line of the Northwest Quarter of the Southeast Quarter of said Section 7;

Thence Southerly along said West line to the Southwest corner thereof;

Thence Westerly, along the North line of the Southeast Quarter of the Southwest Quarter of said Section 7 to the Northwest corner thereof;

Thence Southerly, along the West line of the Southeast Quarter of the Southwest Quarter of said Section 7 to the true point of beginning;

Except that portion lying Northerly of the Southerly line of the Tolt River Pipe Line right of way; also

Except that portion conveyed to the City of Bothell for street by Statutory Warranty Deed recorded under recording number 8811210335; also

Except that portion of the Southwest Quarter of the Southeast Quarter of said Section 7 described as follows:

Beginning at the Northwest corner of Lot 5, Block 1, Valhalla Division no. 1A, according to the plat thereof, recorded in Volume 67 of Plats, Page(s) 20 and 21, in King County, Washington;

Thence North 79 1929" East along the North line of said Lot 5, a distance of 111.39 feet to the true point of beginning;

Thence continuing North 79°19'29" East along said North line a distance of 33.42 feet to the Northeast corner of said Lot 5, said point being on the left bank of the Sammamish River;

Thence North 15°27'57" East along the Northerly extension of the East line of said Lot 5 to the centerline of the Sammamish River;

Thence Westerly along said centerline a distance of 30 feet, more or less, to a line that bears North 15°27'57" East from the true point of beginning;

Thence South 15°27'57' West to the true point of beginning.

(Also known as Lot B of City of Bothell Lot Line Adjustment Number SPL0006-94, recorded under recording number 9412130643.)

Excepting therefrom that portion conveyed under recording number 9006051095, described as follows:

That portion of the Northwest Quarter of the Southeast Quarter of Section 7, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Commencing at the Quarter Section corner common to Sections 7 and 18, in said Township and Range; Thence along the centerline of said Section 7 North 05°32'00" East 1313.66 feet to a 1/2" iron pin being the true point of beginning;

Thence continuing North 05°32'00" East a distance of 213.53 feet to a 1/2" iron pin, witness corner; Thence North 05°32'00" East a distance of 0.305 feet to the Southerly right of way line of the Burlington Northern Railroad:

Thence along said Southerly right of way line along the arc of a 1587.022 foot radius curve to the right, a distance of 142.095 feet (the long cord of which bears South 59°09'06" East 142.045 feet);

Thence South 45°00'00" West 185.00 feet to the center of a Metro sanitary sewer manhole; Thence South 55°47'21' West a distance of 9.70 feet to the true point of beginning.

#### Back 9

#### Parcel A:

That portion of the South Half of the Southeast Quarter of Section 7, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at the Southeast corner of said subdivision;

Thence North 02°33'39" East along the East line of said subdivision to a point where said East line intersects the Southerly line of that portion of the South Half of the Southeast Quarter of said Section 7 conveyed to the City of Seattle for water main by Deed recorded under recording number 5040174, and the Northerly line of the Tolt River Pipe Line right of way as established by Ordinance No. 86134 of the City of Seattle;

Thence Northwesterly along said Southerly line to the centerline of the Sammamish River;

Thence Southwesterly along said centerline of the Sammamish River to the East line of the Bothell-Kirkland Road (96th Avenue Northeast):

Thence Southerly along said East line to the South line of said subdivision;

Thence Easterly along said South line to the point of beginning;

Except that portion condemned in King County Superior Court Cause Number 514489 for the Tolt River Pipe Line right of way.

### Parcel B:

That portion of the North 425.54 feet of the Northeast Quarter of the Northeast Quarter of Section 18, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, lying Easterly of the Easterly line of the Bothell-Kirkland Road (96th Avenue Northeast);

Except the following described tract:

Beginning at a point 804.24 feet West and 129.54 feet South of the Northeast corner of said subdivision; Thence West a distance of 560 feet;

Thence South 74°07'20" West a distance of 93.93 feet to the Easterly margin of said Bothell-Kirkland Road;

Thence Southerly along said Easterly margin to the South line of said North 425.54 feet of said subdivision:

Thence East a distance of 526.56 feet;

Thence North a distance of 296 feet, more or less, to the point of beginning.

#### Parcel C:

That portion of the Northwest Quarter of the Northwest Quarter of Section 17, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at the Northwest corner of said subdivision;

Thence South 00°07'40" East along the West line thereof a distance of 641.04 feet;

Thence North 89°14'50' East a distance of 387.47 feet;

Thence Northeasterly along a curve to the right having a radius of 467.31 feet, an arc distance of 159.93 feet to a point of reverse curve;

Thence along a curve to the left having a radius of 230 feet, an arc distance of 300.93 feet to a point of reverse curve:

Thence along a curve to the right having a radius of 430 feet, an arc distance of 184.12 feet, to a point of compound curve:

Thence along a curve to the right having a radius of 50 feet, an arc distance of 78.10 feet, to a point of tangency;

Thence North 89°22'00" East a distance of 69.56 feet:

Thence North 00°38'00" West a distance of 20 feet, more or less, to the North line of said subdivision;

Thence South 89°22'00" West along said North line a distance of 633.76 feet, more or less, to the point of beginning;

Except that portion conveyed to the City of Seattle for water main by Deed recorded under recording number 5040174; also

Except that portion condemned in King County Superior Court Cause Number 514489 for the Tolt River Pipe Line right of way.

(Also known as a portion of Lot 1, Block 6, Motor Crest Villa Tracts, according to the unrecorded plat thereof.)

#### Parcel D:

That portion of the Northeast Quarter of the Northeast Quarter of Section 18, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning at a point 804.24 feet West and 129.54 feet South of the Northeast corner of said Section 18; Thence West a distance of 560.00 feet;

Thence South 74°07'20" West a distance of 93.93 feet to the Easterly margin of said Bothell-Kirkland Road:

Thence Southerly along said Easterly margin to the South line of said North 425.54 feet of said subdivision:

Thence East a distance of 526.56 feet:

Thence North a distance of 296 feet, more or less, to the point of beginning;

Except that portion conveyed to the City of Bothell by instrument recorded under recording number 8912121430.

#### Parcel E:

That portion of the Northeast Quarter of the Northeast Quarter of Section 18, Township 26 North, Range 5 East, Willamette Meridian, in King County, Washington, described as follows:

Beginning on the Easterly line of the Bothell-Kirkland Highway at a point 436 feet Northerly, measured along a line parallel with the Easterly line of said subdivision, of the Southerly line of said subdivision; Thence Northeasterly to a point on the Easterly line of said subdivision a distance of 586 feet Northerly of the Southeast corner thereof:

Thence Northerly along said Easterly 320.01 feet;

Thence Westerly parallel with the Southerly line of said subdivision a distance of 1333.51 feet to a stone monument on the Easterly line of said highway;

Thence Southerly along said Easterly line to the point of beginning;

Except that portion of said premises described as follows:

Beginning at the point of beginning above described, which is the Southwest corner of the above described tract:

Thence Northeasterly along the Southerly line of the above described tract, a distance of 234.00 feet; Thence Northerly at right angles to said Southerly line a distance of 183.00 feet;

Thence Southwesterly a distance of 332.00 feet, more or less, measured along a line parallel with the Southerly line of the above described property, to the Easterly line of the Bothell-Kirkland Highway; Thence Southeasterly along said Easterly line of the Bothell-Kirkland Highway to the point of beginning.

### **EXHIBIT B**

Forterra has incurred certain staff costs and project management expenses relating to the acquisition and ownership that have not been reimbursed from other sources in the following four categories: (i) project strategy (\$400/hour), project direction and negotiation (\$230/hour), project management (\$110/hour), and administrative assistance (\$80/hour).

### 2015

Category	Hours	Rate	Subtotal
Project Strategy	29.5	\$400.00	\$11,800.00
Project Direction and Negotiation	263.24	\$230.00	\$60,545.20
Project Management	134.75	\$110.00	\$14,822.50
Administrative Assistance	62.40	\$80.00	\$4,992.00
			\$92,159.70

### 2016

Category	Hours	Rate	Subtotal
Project Strategy	0.0	\$400.00	\$0.00
Project Direction and Negotiation	24.73	\$230.00	\$5,687.90
Project Management	11.00	\$110.00	\$1,210.00
Administrative Assistance	0.0	\$80.00	\$0.00
			\$6,897.90

AFTER RECORDING, RETURN TO:

City Clerk City of Bothell 18305 - 101st N.E. Bothell, WA 98011 49/55

# CONSERVATION EASEMENT

### RECITALS

- A. Grantor is the sole owner in fee simple of certain real property located in the City of Bothell, King County, Washington, more particularly described on Exhibit A attached hereto and incorporated by this reference (the "Property").
- B. The Property possesses natural, scenic, open space, water resource, and recreational value (collectively "Conservation Values") of great importance to Grantors, the people of the City of Bothell, the people of King County, and the people of the State of Washington.
- C. In particular, the Property now serves as a view corridor adjacent to the Burke-Gilman Trail and State Route 522 providing scenic value to the public and open space in forming a greenway adjacent to the Sammamish River, and providing recreational open space in the form of a golf course.
- D. In March 1993, the King County Council passed Ordinance 10750 which authorized the 1993 Regional Conservation Futures Acquisition Program and declared the Council's intent to issue bonds to finance the acquisition of public open spaces, including acquisition of development rights by easement, funded through the Conservation Futures Tax levy to pay the principal and interest on such bonds.
- E. In October 1993, the King County Council, by Ordinance 11068 approved the allocation of funds to projects, and approved an Interlocal Agreement signed in March 1994, with the City of Bothell to assign funds for the "Burke Gilman/Sammamish River Greenway" project, more particularly included as Exhibit B (the "Interlocal Agreement").
- F. The legislatively declared policies of the State of Washington, in the Revised Code of Washington (hereinafter "RCW") Chapter 84.34, provide that it is in the best interest of the

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State to maintain, preserve, conserve and otherwise continue in existence, adequate open-space lands and to assure the use and enjoyment of natural resources, and scenic beauty for the economic and social well-being of the State and its citizens.

- Grantors intend that the Conservation Values of the Property be preserved and maintained by the continuation of land use patterns, including, without limitation, those relating to use of the Property as a golf course accessible to the general public, existing at the time of this grant, that do not significantly impair or interfere with those Conservation Values.
- H. Grantors further intend, as owners of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity, including the right to subdivide or develop the Property for any residential, commercial or industrial purposes (the "Development Rights"), subject to the express conditions of this Agreement.
- I. Grantee is an optional municipal code city incorporated under the laws of the State of Washington permitted under RCW 84,34.210 to acquire easements and other rights necessary to protect, preserve, limit for the use of, or otherwise conserve open space land for public use or enjoyment.
- J. Grantee agrees by accepting this grant to honor the intentions of Grantors stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come, subject to the express conditions of this Easement.
- NOW, THEREFORE, for good and valuable consideration, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Washington and in particular RCW 84.34, RCW 64.04.130 and King County Ordinance 10750, Grantors hereby voluntarily grant and convey to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").
- 1. Grant of Development Rights, Covenants and Conditions. Pursuant to the laws of the State of Washington and in particular RCW 84.34, Grantor hereby voluntarily grants and conveys to Grantee Development Rights in perpetuity regarding the Property on the terms, covenants, obligations and conditions set forth herein. Grantor expressly intends that this purchase of Development Rights, including all covenants, obligations, and conditions identified herein, shall be binding upon the Grantor, and Grantor's successors and assigns, and shall be deemed a covenant running with and perpetually binding the Property herein.
- 2. Purpose. It is the purpose of this Easement to assure that the Property will be retained forever in its open space condition and to prevent any use of the Property that will significantly impair or interfere with the preservation of the Property in its current or more natural state, and as a view corridor. "Open space" uses, as used herein, means those uses that

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conserve and enhance its natural and scenic resources. One such open space use is the operation of a commercial, privately owned public golf course, which is the current use of the Property. Grantors intend that this Easement will confine the use of the Property to the following activities:

- a. Golf course;
- b. Low impact, passive-use open field recreation uses;
- c. Open-space park facility; provided, however, that activities such as ball fields, courts and gyms are not allowed;
  - d. Open field agricultural uses;
  - e. Wildlife and/or horticultural uses.
- 3. Rights of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:
- a. To enter upon the Property at reasonable times in order to monitor Grantors' compliance with and otherwise enforce the terms of this Basement; provided that such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not unreasonably interfere with Grantors' use and quiet enjoyment of the Property;
- b. To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration by the Grantor, its successors, or assigns of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to Section 9.
- 4. <u>Prohibited Uses</u>. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Grantee acknowledges and agrees that it will neither conduct, engage or permit any such activity or use. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
- a. The subdivision of the Property for any purpose, except as may be required by law for the uses permitted in Section 4.c.;
- b. Any commercial or industrial use of or activity on the Property other than those relating to agriculture, horticulture, passive recreation, or use of the Property as a golf course;
- c. The placement or construction of any buildings, structures, or other improvements of any kind (including, without limitation, fences, roads, parking lots, trailers,

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towers, antennae, and power generation facilities); provided, however, in the event that the Property described in Exhibit C (the "Back Nine") shall no longer be operated as a golf course or shall be owned in fee by a party other than the fee owner of the Property, the Grantor may, at its option at a specific site mutually negotiated and agreed upon with Grantee acting reasonably and consistent with the Conservation Values of the Property, construct a maintenance building to replace the current maintenance building on the Back Nine which (i) is no more than one (1) story, (ii) is built in a style architecturally consistent with the clubhouse building as it currently exists on the parcel adjacent to the Property or may in the future be modified, (iii) is landscaped and shielded from public view as much as practicable, (iv) does not exceed two thousand (2,000) square feet in floor area, provided, further, that the portion of the Property containing the new maintenance building and the surrounding area used for storage of sand and gravel, storage of other maintenance materials, vehicular access to the maintenance building, and otherwise used to conduct maintenance operations shall be one contiguous parcel not to exceed one-half (1/2) acre. It is expressly understood and agreed that the repair and replacement of all existing buildings, structures and other improvements on the Property is allowed; provided, that the height, size and style of such repairs and replacements shall be consistent with the building, structure or improvement being repaired or replaced, except by Grantee's consent, not to be unreasonably withheld.

- d. Any alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat or sod except as may be required for proper maintenance of the golf course on the Property or as otherwise may be reasonably required in the course of any activity permitted by this Easement. Accordingly, this section expressly allows for the necessary periodic renovation of the golf course to include alterations of greens and tee areas, as well as other areas of the golf course, such that any renovation does not substantially detract from the benefits of the Easement as previously described;
- e. Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters; provided, that this prohibition shall not be construed as extending to operations and practices (including, without limitation, the use of fertilizer, pesticides, herbicides and fungicides) consistent with standard golf course maintenance or standard ground maintenance for any other permitted activity;
- f. The cutting down, or other destruction or removal of live trees and shrubs, except as necessary to control or prevent hazard, disease or fire; provided, however, upon approval of the Grantee trees and shrubs may be pruned, removed, or added on a limited basis as necessary in Grantor's judgment for proper maintenance of the golf course on the Property and the View Corridor.
- g. The establishment or maintenance of any commercial feedlot, or any animal husbandry practices on the Property;

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- The dumping or other disposal of wastes, refuse and debris on the Property except pursuant to a permitted use of the Property (such as disposal of grass clippings and brush grown on the Property or other adjacent property held by Grantor);
- The above-ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel and communication lines and related facilities, but excluding systems for irrigating the Property, except to the extent, and on such portion of the Property as existing easements in favor of third parties allow;
- The placement of any signs or billboards on the Property, except those signs (including those necessary or customary now or in the future for operation of the golf course on the Property, such as tee markers/signs) whose placement, number and design doe not significantly diminish the scenic character of the Property or the view corridor may be displayed, including those necessary to advertise the Property for sale and rent, to post the Property to control unauthorized entry or use and those signs permitted or required pursuant to Section 20 identifying the Property as part of the King County Conservation Futures Program;
- The exploration for, or development and extraction of, minerals and hydrocarbons by any surface mining method or any other method that would significantly impair or interfere with the Conversation Values of the Property; and
- The use on the Property of motorized vehicles except power golf carts and other vehicles as necessary or reasonable for operation and maintenance of the Property.
- Reserved Rights. Grantors reserve to themselves, and to their personal representative, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement.
- Grantee's Maintenance Obligation. Grantee agrees to provide, on a limited basis, maintenance of the view corridor, as described on Exhibit D, attached hereto and incorporated herein by this reference ("View Corridor"). This maintenance shall consist of the following:
- As soon as practicable after closing, the installation, at Grantee's expense, of additional fencing along the northern boundary of the Property where it abuts the Burke-Gilman Trail (the "Trail"), such fencing to be of a type and quality consistent with existing fencing along that property line;
- Annual plant and tree pruning on the Property adjacent to the Trail, in order to ensure clear visibility of the open space along such portion of the Trail as borders the

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Property. Grantor and Grantee agree that Grantee's maintenance of the view from the Trail should be balanced with providing a safe environment for users of the Property and users of the Trail. Grantor and Grantee recognize Grantor's use of the Property as a golf course and agree that it may be necessary to limit the extent and frequency of tree and plant pruning adjacent to the Trail in order to maximize safety.

Grantor agrees to provide Grantee access to and across the Property at reasonable times as necessary to maintain the View Corridor, fencing and the signage described in Section 20.

- 7. Clubhouse Area. It is the intent of Grantor to consider, at some future date, the replacement and/or renovation of the Clubhouse and/or Parking area described on Exhibit E, attached hereto and incorporated herein by this reference (the "Clubhouse Area"). Accordingly, it is expressly agreed that Grantor has not conveyed the Development Rights or any other Conservation Values with regard to the Clubhouse Area and that only the terms of Sections 17 and 24 of this Easement shall apply to the Clubhouse Area.
- 8. Notice of Change in Permitted Use. Grantor and Grantee agree and acknowledge that the current use of the Property is as the first nine (9) holes of a golf course that is open to the public. In the event Grantor wishes to change the use of this Property to another use, Grantor shall provide Grantee sixty (60) days written notice of such use, which notice shall include a narrative description and any available plans describing the modification to the use of the Property and to the View Corridor. If such modification is to a use described in Section 2 above and otherwise meets the terms and conditions of this Easement, Grantee agrees to approve such changes, in writing within sixty (60) days after receiving such notice. In the event Grantee believes that all or part of such proposed modification will result in an impermissible use of the Property or otherwise violates the terms and conditions of this Easement, Grantee shall reject such modification, and shall within sixty (60) days after receiving such written notice provide Grantor with written explanation of its rejection of such modification. Grantor shall not undertake any modification to the Property that is an impermissible use under the terms of this Easement.
- 9. Grantee's Remedies. If Grantor is in violation of terms of this Easement or a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte if necessary, by restraining order or temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values

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protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this section with prior notice to Grantor but without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- enforcing the terms of this Easement, including, without limitation, costs of suit and attorneys' fees, shall be borne by the defaulting party. The prevailing party in any action to enforce the terms of this Easement shall be entitled to its costs, attorneys' fees and expenses of litigation. Any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor.
- b. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other terms of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or by construed as a waiver.
- shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.
- 10. Access. No right of access, other than visual access by the general public to any portion of the Property is conveyed by this Easement.
- 11. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the

DE114918.1AGR/F0004.12026 DE 10/23/95-1 Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

- 12. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee agrees that it will cooperate with Grantor in obtaining whatever reductions or exemptions from property taxes (if any) are available under law, but can not assure that such reductions or exemptions can be obtained or maintained.
- 13. Maintenance of Structures and Facilities. Grantor shall be responsible for maintenance of all structures, infrastructure and facilities on the Property, including but not limited to those bridges spanning the Sammamish River identified on Exhibit F, attached hereto and incorporated herein by this reference, utility facilities, water irrigation, retention and conveyance facilities.
- 14. Restrictions on Transfer of Easement. Grantee agrees that its interest in the Easement shall not be transferred or conveyed except to another governmental entity or to a private nonprofit conservation trust by agreement providing that the Conservation Values preserved by this Easement shall be continued and maintained in conformance with the uses authorized by this Easement and by RCW 84.34, for open-space land as now constituted or hereafter amended. The above notwithstanding, the Property, at Grantee's discretion, could be converted to a different use if equivalent land within Grantee's jurisdiction shall be received in exchange therefore, as permitted by King County Ordinance No. 10750, Section 8. If Grantee shall decide to transfer the Easement as provided in the preceding sentence, Grantee shall, if practicable, offer Grantor a right of first refusal to purchase the Easement is accordance with the procedures equivalent to those described in Section 17. Grantee shall not be required to offer such right of first refusal to Grantor should it impair Grantee's right to secure equivalent land within Grantee's jurisdiction as described above.
- 15. Hold Harmless. Purchaser, by accepting the rights and interests conveyed herein, assumes no affirmative obligations for the management, supervision or control of the Property or liability for any activities occurring on the Property. Grantor shall indemnify, defend and hold harmless Grantee and its elected officials, employees, agents, and contractors, and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due

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solely to the negligence of any of the Indemnified Parties; (ii) the obligations specified in Sections 11 and 12; and (iii) the existence or administration of this Easement.

16. Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law. Grantee shall not be entitled to any portion of any compensation attributable to the taking of all or any portion of the Property (other than the Easement) by the power of eminent domain or the threat thereof, all of which shall belong to Grantor.

# 17. Right of First Opportunity to Purchase.

- a. Grantor (which shall include for purposes of this Section 17, David L. Richards and Sharyn M. Richards due to their ownership interest in the Back Nine and/or Clubhouse Area) hereby grants to Grantee the right to purchase the Property, Bank Nine and Clubhouse Area (collectively the "Subject Property" or "Properties") as provided herein. If at any time during the term of this Easement Grantor elects to sell or offer for sale all or any of the Subject Properties (including any portion of a single Subject Property), Grantee shall have the first right to purchase the same.
- b. Grantor shall give notice to Grantee, in writing, that Grantor desires to offer such Properties or any one (1) of them for sale. If Grantee is not then in default hereunder and wants to submit an offer to purchase the property Grantor wishes to offer for sale, Grantee shall deliver to Grantor, within forty-five (45) days of delivery of notice to Grantee, a written proposal setting forth the purchase price and all other terms and conditions of such offer. Said terms and conditions must provide for payment of the full purchase price at closing, unless Grantor is willing to accept an installment sale.
- Once Grantee's offer to purchase is delivered, Grantor shall have thirty (30) days either to accept or reject the offer. In the event Grantee's offer to purchase is rejected by Grantor, Grantor may, for twelve (12) months after Grantor's rejection, sell or offer to sell and/or accept an offer to buy said property for a price higher than the price offered by Grantee plus five percent (5%) of that price (taking into consideration all terms and allocations of costs between buyer and seller). If within twelve (12) months after Grantor's rejection Grantor receives a bona fide offer to purchase for a price equal to or less than five percent (5%) greater than that offered by Grantee that Grantor desires to accept, Granter shall provide Grantee with written notice of the price and other terms of such offer. Grantee shall have forty-five (45) days thereafter to decide whether to purchase the property. In the event Grantee decides to purchase the property, the price and terms of the purchase shall be at Grantee's option, either (i) the price and terms originally offered by Grantee upon notice of Grantor's desire to sell or (ii) that price and terms offered by the third party pursuant to the bona fide offer. Grantee shall provide written notice to Grantor of its exercise of its right to purchase and its choice of terms.

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- d. If the Grantee fails to exercise its option to purchase and the sale of said property to a party other than Grantee as provided herein is closed, Grantee's right of first opportunity to purchase such property (but not any other portion of the Properties) shall automatically terminate and be of no further force or effect. If such property is not sold to, or a binding purchase agreement for its sale executed with, a party other than Grantee with twelve (12) months from the date of Grantor's rejection, Grantee's right of first opportunity to purchase shall be reinstated, and Grantor must again give thirty (30) days written notice to Grantee if Grantor desires to offer such property for sale.
- 18. Subsequent Transfers. Grantor (and to the extent applicable, David L. Richards and Sharyn M. Richards) agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property or Properties, including, without limitation, a leasehold interest. Grantor (and David L. Richards and Sharyn M. Richards) further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days (or longer if so required by Section 17) prior to the date of such transfer. The failure of Grantor (or David L. Richards and Sharyn M. Richards) to perform any act required by this section shall not impair the validity of this Easement or limit its enforceability in any way, which shall be deemed to run with and perpetually bind the Property.
- 19. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantors:

Wayne Golf Course, Inc.
David L. Richards and Sharyn M. Richards
16721 - 96th Avenue N.E.
Bothell, WA 98011

To Grantee:

City of Bothell 18305 101st Avenue N.E. Bothell, WA 98011 Attn: City Manager

or to such other address as either party from time to time shall designate by written notice to the other. If any notice is mailed, it shall be conclusively deemed received three (3) days following the date it is deposited in the mail. The date of mailing shall be counted as one of the three days. The postmark affixed shall be conclusive evidence of the date of mailing.

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- 20. Signage. Grantee shall install within three (3) months after acquisition, and shall maintain, at Grantee's expense, signs identifying the Property as being subject to King County's 1993 Regional Conservation Futures Program. Such signs shall be clearly visible to the public entering the Property and along the Burke-Gilman trail. Each sign shall instruct the public that the View Corridor is a "sight access" only. Grantor agrees to allow Grantee access to the Property to install and maintain such signage.
- 21. Preservation of Tax Exempt Status of Bonds. Grantor acknowledges that Grantee's purchase of this Easement was funded by tax exempt bond financing under King County's 1993 Regional Conservation Futures Program. Grantor agrees that it will cooperate with Grantee to ensure, and will not take or omit to take any action, as to cause the interest on such bonds to become taxable to the purchaser of such bonds. To the extent Grantor incurs expenses in taking action to cooperate, except as otherwise required by this Agreement, Grantee shall reimburse Grantor for such expenses.
- 22. Amendment. If circumstances arise under which an amendment or modification of this Easement would be appropriate. Grantor and Grantee are free to jointly amend this Easement; provided, that no amendment shall be allowed that will affect the validation of the Easement under RCW 84.34, King County Ordinance 10750, and that Interlocal Agreement. Any amendment shall be consistent with the purpose of this Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of King County, Washington.
- 23. Recordation. Grantee shall record this instrument in timely fashion in the official records of King County. Washington, and may re-record it at any time as may be required to preserve its rights in this Easement.

# 24. General Provisions.

- a. Governing Law; Venue. The interpretation and performance of this Easement shall be governed by the laws of the state of Washington. Venue of any action hereunder shall be in the Superior Court of King County, Washington.
- b. <u>Liberal Construction</u>. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of RCW 84.34 and applicable King County ordinances. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions

DE114918.1AGR/F0004.12026 DE 10/23/95-1 of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

- d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 22 of this Easement.
- e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- f. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, transferees and assigns and shall continue as a servitude running with and perpetually binding the Property.
- g. <u>Termination of Rights and Obligations</u>. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- h. <u>Captions</u>. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- i. No Waiver. No term or condition or covenant Easement shall be deemed waived and no breach shall be deemed excused unless such waiver or consent shall be in writing and signed by the party claimed to have made such waiver or consent. No such waiver or consent shall be deemed to be a waiver or consent to any subsequent violation or breach of any term, condition or covenant of this Easement.

IN WITNESS WHEREOF, Grantor and Grantee have set their hands on the day and year first above written.

GRANTEE:

GRANTOR:

CITY OF BOTHELL

WAYNE GOLF-COURSE, INC.

By:

By:

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CONTRACTOR SECURIOR S

FOR PURPOSES OF SECTIONS 17, 18, 19, APPROVED AS TO FORM: 22, 23 AND 24 ONLY: Office of David L. Richards M. STATE OF WASHINGTON COUNTY OF KING I certify that I know or have satisfactory evidence that David L. Richards is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument. DATED this 24th day of Ottober NOTARY PUBLIC Printed Name: My commission expires: STATE OF WASHING COUNTY OF KING I certify that I know or have satisfactory evidence that Sharyn M Richards is the person who appeared before me, and said person acknowledged that she signed this instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in this instrument. DATED this 24th day of October NOTARY PUBLIC Printed Name: My commission expires: DE114918.1AGR/F0004.77 -13-10/23/95-1

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L certify that I know o	r have satisfactory evidence that Richard Kirkwood
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to execute the instrument and	acknowledged it as City Manager of the City of Bothell,
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Order No. 278445

### A.L.T.A. COMMITMENT SCHEDULE A Page 3

LEGAL DESCRIPTION, continued:

AND EXCEPT that portion of the northwest quarter of the southeast quarter of Section 7, Township 26 North, Range 5 East, W.M., in King County, Washington, as follows:

Commencing at the quarter section corner common to Sections 7 and 18, said Township and Range; thence along center line of said Section 7, north 5°32'00" east 1,313.66 feet to a one half inch fron pin being the TRUE POINT OF BEGINNING; thence continue north 5°32'00 east 213.53 feet to a one half inch iron pin, witness corner; thence north 5°32'00" east 0.305 feet to the southerly right-of-way line of the Burlington Northern Railroad; thence along said southerly right-of-way line on an arc of 1,587.022 foot radius curve to the right, a distance of 142.095 feet (the long chord which bears south 59°09'06" east 142.045 feet); thence south 45°00'00" west 185.00 feet to the center of a Metro sanitary sewer manhole; thence south 55°47'21" west 9.70 feet to the TRUE POINT OF BEGINNING; AND EXCEPT that portion of the southwest quarter of the southeast

quarter of said Section 7, described as follows:

Beginning at the northwest corner of Lot 5, Block 1, Valhalla Division No. 1a, according to the plat thereof recorded in Volume 67 of Plats, pages 20 and 21, in King County, Washington; thence north 79°19′29" east along the north line of said Lot 5, a distance of 111.39 feet to the TRUE POINT OF BEGINNING; thence continuing north 79°19′29" east along said north line a distance of 33.42 feet to the northeast corner of said Lot 5, said point being on the left bank of the Sammamish River; thence north 15°27′57" east along the northerly extension of the east line of said Lot 5 to the centerline of the Sammamish River; thence westerly along said centerline a distance of 30 feet, more or less, to a line that bears north 15°27′57" east from the TRUE POINT OF BEGINNING; thence south 15°27′57" west to the TRUE POINT OF BEGINNING;

AND ALSO EXCEPT the north 900 feet of the east 470 feet of that portion of the southwest quarter of the southeast quarter of said Section 7, lying southerly of Burlington Northern Railroad and the Tolt River Pipeline rights-of-way and lying westerly of 96th Avenue Northeast right-of-way;

(ALSO KNOWN AS a portion of Lot "B" of City of Bothell Lot Line Adjustment No. SPL0006-94 as recorded under Recording Number 9412130643).

END OF SCHEDULE A

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A.L.T.A. COMMITMENT SCHEDULE A

Order No. 278445

SCHEDULE A Page 2

The land referred to in this commitment is situated in the county of King, state of Washington, and described as follows:

### PARCEL A:

That portion of the southeast quarter of the southwest quarter and of the southwest quarter of the southeast quarter and of the northwest quarter of the southeast quarter of Section 7, Township 26 North, Range 5 East, W.M., in King County, Washington, described as follows:

Beginning at a point on the west line of the southeast quarter of the southwest quarter of said Section 7, a distance of 589.8 feet southerly from the northwest corner thereof, measured along the west line of said subdivision, which point is the TRUE POINT OF BEGINNING of the tract herein described; thence south 78°29'50" east 1,218.81 feet to a point on the north and south center line of said Section 7, a distance of 517.83 feet north of the south quarter corner of said Section 7; thence south 41°01'05" east 613.90 feet; thence south 74°52'05" east 194.53 feet; thence north 78°58'55" east 290 feet, more or less, to the center line of the Sammamish River; thence easterly, along the said center line of the Sammamish River, to the westerly boundary of State Highway No. 2-A; thence northerly, along said westerly boundary to an intersection of said boundary with the east line of the southwest quarter of the southeast quarter of said Section 7; thence northerly, along said east line, to an intersection with the southerly boundary of Northern Pacific Railway right-of-way; thence northwesterly, along said right-of-way line, to an intersection with the west line of the northwest quarter of the southeast quarter of said Section 7; thence southerly, along said west line to the southwest corner thence westerly, along the north line of the southeast quarter of the southwest quarter of said Section 7, to the northwest corner thereof; thence southerly, along the west line of the southeast quarter of the southwest quarter of said Section 7 to the TRUE POINT OF BEGINNING, in King County, Washington; EXCEPT that portion thereof lying northeasterly of the southwesterly line of the Tolt River Pipeline as condemned in King County Superior Court Cause No. 514489; AND EXCEPT that portion deeded to the City of Bothell, a municipal corporation, for the Wayne Bridge Replacement Right-of-Way, under King County Recording Number 8811210335;

(legal description, continued)

#### EXHIBIT B

The same of

Director of Records

INTERLOCAL COOPERATION AGREEMENT
BETWEEN KING COUNTY AND THE CITY OF BOTHELL
1993 REGIONAL CONSERVATION FUTURES ACQUISITION PROGRAM

This Interlocal Cooperation Agreement is entered into between the City of Bothell ("City") and King County ("County").

# ARTICLE I. RECITALS

On March 8, 1993, the King County Council passed Ordinance 10750 which authorized the 1993 Regional Conservation Futures Acquisition Program and declared the Council's intent to issue bonds to finance the acquisition of public open spaces, funded through the Conservation Futures tax levy to pay the principal and interest on such bonds.

Projects to be funded from bond proceeds include projects of Extraordinary Regional Significance, Local Projects in Unincorporated King County, Local Projects of The City of Seattle and Local Projects in Suburban Cities. Prior to the distribution of bond proceeds by the County to an eligible jurisdiction, Ordinance No. 10750 requires execution of an Interlocal Cooperation Agreement containing provisions necessary to satisfy applicable federal tax laws and regulations and to make certain other provisions.

On August 25, 1993, the King County Open Space Citizens Oversight Committee (the "Committee") approved its recommended allocation of the 1993 Regional Conservation Futures Acquisition Program funds from the Regional and Suburban City Local Projects categories pursuant to Ordinance 10750.

On October 11, 1993, the King County Council, by Ordinance 11068, approved the allocation of funds to projects.

In consideration of the mutual covenants contained herein, and Washington State Chapter 39.34, the parties agree as follows:

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### ARTICLE II. DEFINITIONS.

- 2.1. Administrative Costs. All negotiation, general management and indirect expenses incurred by City in implementing the Projects, including, without limitation, King County staffing costs of the Committee and costs of overseeing the Program.
- 2.2. Agreement. This interlocal cooperation agreement between the County and the City regarding the distribution of proceeds from the sale of bonds for open space as described and authorized by the Program Ordinances.
- 2.3. <u>Bond Ordinance</u>. King County Ordinance 11121, passed November 22, 1993, authorized the issuance and sale of bonds to finance the projects authorizing by Ordinance No. 10750 and Ordinance 11068 or subsequently approved by the County.
- 2.4. Bond Proceeds. The principal proceeds received from the sale of bonds. The term shall not include accrued interest on the bonds paid by the original purchaser of the bonds or any earnings received from the investment of bond principal.
- 2.5. Bond Redemption Fund. The County fund designated by ordinance for the purpose of paying the principal of and interest on any bonds issued by the County.
- 2.6. <u>Bonds</u>. Any bonds, notes or other evidence of indebtedness sold pursuant to the Bond Ordinance and any refunding bonds issued in lieu thereof.
  - 2.7. Capital Costs. The term "capital costs" shall be construed consistent with the term "capital purposes" in Article VII, § 2(b) of the Washington State Constitution. The term shall not include the replacement of equipment. The term may include payment for all costs related to acquiring real property, including, without limitation, real estate appraisals, legal and acquisition costs; making qualified reimbursements; paying necessary project administration expenses; staffing costs of the Citizens Oversight Committee; interest payments on any interim financing pending the receipt of Bond Proceeds; and paying the costs and expenses incurred in issuing the bonds, administering the planning and distribution of Bond Proceeds and other on-going administrative costs of overseeing the Program.

- 2.8. Citizens Oversight Committee or Committee. That King County Open Space Citizen Oversight Committee established following enactment of Ordinance 9071 and authorized under Ordinance 10750 to review and report to the King County Council on implementation of the 1993 Regional Conservation Futures Acquisition Program. The Committee is also responsible for recommending to the Council reallocations of Bond Proceeds when available for new or revised projects.
- 2.9. Chief Financial Officer. The person serving as chief financial officer of the County's Office of Financial Management.
- 2.10. <u>Code</u>. The Internal Revenue Code of 1986, as amended, together with all applicable regulations.
- 2.11. Conservation Futures. The term "conservation futures" means the fee simple or any lesser interest, development right, easement, covenant, or other contractual right necessary in order to protect, preserve, maintain, improve, restore, limit future use of, or otherwise conserve open space land which may be acquired by purchase, gift, grant, bequest, devise, lease or otherwise, except by eminent domain, all in accordance with the provisions of RCW 84.34 and King County Ordinances 10750 and 11068.
- 2.12. Open Space. The term "open space" or "open space land" shall have the same meaning as set forth in RCW 84.34.20 as now or hereafter amended. This statute currently defines these terms as (a) any land area so designated by official comprehensive land use plan and adopted by a city or county and zoned accordingly, or (b) any land area, the preservation of which in its present use would (i) conserve and enhance natural or scenic resources, (ii) protect streams or water supply, (iii) promote conservation of soils, wetlands, beaches or tidal marshes, (iv) enhance the value to the public of abutting and neighboring parks, forests, wildlife reserves, natural reservations or sanctuaries or other open space, (v) enhance recreational activities, (vi) preserve historic sites, or (vii) retain in its natural state, tracts of land not less than five acres situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification.
- 2.13. Program. The 1993 Regional Conservation Futures
  Acquisition Program as authorized by the Program Ordinances.

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- 2.14. <u>Program Ordinances</u>. The term "Program Ordinances" means King County Ordinances 10750 and 11068 and the Bond Ordinance.
- 2.15. <u>Project</u>. The term "Project" means a specific project for acquisition of open space to which any Bond Proceeds are allocated which meet open space criteria as described in Ordinance 10750, Attachments A, B and C, and RCW 84.34.020.
- 2.16. Project Categories. As set forth in Ordinance No. 10750, Project Categories are the Regional Projects, King County Local Projects, Suburban City Local Projects or Seattle Local Projects.
- 2.17. Qualified Reimbursements. Reimbursements of advances for Project costs made after the enactment of Ordinance 10750 from other funds in anticipation of the receipt of Bond Proceeds as evidenced by written records made contemporaneously with such advances and in a form acceptable to the Chief Financial Officer. This includes interest charges paid to acquire interim financing.
- 2.18. Scope Change. The terms "scope change" means a deviation or change in a project's description that results in a more than 10%, but less than 50%, increase, decrease or difference in a project's total acreage or budget. If a deviation or change in a project's description results in an increase, decrease or difference in a project's acreage or budget of greater than 50%, it shall be considered a new project. For Seattle, such a change that results solely from application of funds from its "Unprogrammed Project Funding" Project shall not be considered a "scope change" or a "new project".
- 2.19. <u>Taxable Bonds</u>. Bonds on which the interest is included in the gross income of recipients thereof by reason of the failure to comply with applicable requirements of the Code.
- 2.20. Tax Exempt Bonds. Bonds on which the interest is not included in the gross income of the recipients thereof by reason of section 103(a) of the Code of 1986 as amended.

# ARTICLE III. TERM OF AGREEMENT.

This Agreement shall continue in full force and effect and bind the parties hereto upon execution of the Agreement by both parties. The term of the Agreement shall be indefinite. The Agreement will terminate only if the City (i) is unable or unwilling to expend the

funds provided through this Agreement, (ii) satisfies the matching requirements, if any, contained in this Agreement, and (iii) upon reimbursement by the City to the County of all unexpended funds provided by the County pursuant to this Agreement in the manner and amounts described below. The terms of Sections 4.3, 4.4, 4.5, 4.6, 7.1, 7.2 and 9.1 shall survive termination of this Agreement.

## ARTICLE IV. CONDITIONS OF AGREEMENT.

- the County are listed in Attachment A, which is incorporated herein by reference. All Projects must meet open space criteria as described in King County Ordinance 10750, Attachment B, and RCW 84.34. City may propose a scope change to a project's description by providing a written request to the Office of Open Space and to the Committee and by submitting with such request a revised implementation schedule reflecting such proposed scope change. The Committee shall have forty-five (45) days to review and recommend approval or disapproval to the Council of the City's proposed scope change. The King County Executive shall submit the City proposal and the Committee recommendation to the King County Council which shall determine by established procedures for King County Capital Improvement Projects whether of not to make such scope change.
- 4.2. Project Implementation. Project Implementation shall proceed upon the schedule as set forth in Attachment B, which is incorporated herein by reference, or as set forth in approved modifications to the implementation schedule set forth in Attachment B. The parties recognize that delay in implementation of Projects may jeopardize the financial viability of the Projects as currently approved and the tax exempt status of interest on the Bonds. The City, therefore, certifies that, as to its Projects, it has reviewed its real property acquisition procedures, commits to all reasonable action and will proceed with due diligence to ensure that its Projects are expeditiously completed in accordance with the Project implementation schedule, and that it will give highest priority to those properties where there is a particular threat of conversion to a more intensive use or increases in acquisition costs. If City has not demonstrated

through its October 1994 semi-annual reporting pursuant to Article VI of this Agreement that it has made substantial progress in implementing a project, the Council may, after receipt of the Executive's acquisition progress report as provided in Ordinance 11068, reallocate project funds or extend project completion deadl by October 20, 1995 shall be reprogrammed to other projects.

- 4.3. Use of Funds. Funds in the form of Bond Proceeds made available to the City pursuant to this Agreement, as well as matching funds provided by the City pursuant to this Agreement, may be used to defray capital costs of projects pursuant to the Program Ordinances, RCW 84.34 and this Agreement. Funds utilized pursuant to this Agreement may not be used to purchase Conservation Futures obtained through the exercise of eminent domain. Seattle may apply funds from its "Unprogrammed Program Funding" Project to any other Project in its sole discretion.
- 4.4. <u>Project Administration and Maintenance in Perpetuity</u>. The City shall perform and bear all of the cost of all necessary administration and maintenance for its Projects.

The City, or any successor in interest, agrees to maintain properties acquired with funds provided pursuant to this Agreement as open space in perpetuity. If the City wishes to change the status or use of properties acquired with funds provided pursuant to this Agreement to any other purpose, the City shall, at the County's discretion, pay the County an amount in cash equal to the property's fair market value or substitute other property of equal or better market and open value acceptable to the County. In either case, the value of property shall be established at the time of the change in status or use, based on the best and highest use and not necessarily based on its value as open space.

At its own cost, the City will provide the County an independent M.A.I. appraisal of such Property's fair market value in accordance with this section. The value established by the appraisal will not be binding on the County. The City shall provide the County with written notice of its desire to the change of use of the Property and shall submit such M.A.I. appraisal and proposed substitute properties with such notice. The County shall within ninety (90) days respond by (i)

accepting such appraised value; (ii) requesting additional information regarding such proposed substitute land; or (iii) rejecting both the appraised value and proposed substitutes. The County shall not unreasonably exercise its discretion and shall work with the City to expeditiously resolve issues relating to an acceptable valuation or substitution. If and when the County has agreed upon an acceptable valuation or substitution, the City shall either pay the County the full amount of the valuation or record appropriate declarations of restrictive covenants upon the substitute property. The City shall not change the use of the Property until the County has agreed in writing to an acceptable substitution or valuation and made such payment or recorded such declarations.

Nothing herein shall prevent the City from granting easements, franchises or concessions or from making joint use agreements or other operational agreements which are compatible with the use of a Project for the purposes authorized in this Agreement and the Program Ordinances and do not materially diminish the open space value of the Property. The City shall notify the County of all such proposed franchises, concessions or agreements not less than thirty (30) days prior to their effect.

- 4.5. Special Conditions. As set forth in the Ordinances, the Agreement between the County and the City may contain special conditions. If applicable, such special conditions are described on Attachments A, B and C and are incorporated herein by reference.
- The City shall install, within three months of Signs. acquisition, and maintain signs identifying the property purchased under the Program as having been acquired under King County's 1993 Regional Conservation Futures Acquisition Program. Such signs shall be clearly visible to the public entering upon the Property or, where public access is inappropriate, clearly visible from the public rightof-way to the extent practicable. Such signs shall be of an appropriate size (generally not smaller than two feet by three feet) and such identification shall be as prominent as any other identifications of the Property. The City also shall install within three months of the date of this Agreement or within three months of the date of acquisition and maintain similar signs on all property acquired with

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funds under the 1989 King County Open Space Bond Program identifying the property as having been acquired under such Program.

4.7 Recording of this Agreement. As part of the closing of escrow of the acquisition of any Conservation Future upon any parcel within a Project, City shall record with King County's Department of Records and Elections either this Agreement or a memorandum of this Agreement in a form approved in writing by the County.

# ARTICLE V. BOND PROCEEDS.

- 5.1. <u>Distribution of Principal Proceeds</u>. The Principal Proceeds of the Bonds shall be deposited in a fund or funds to be designated by the County for the purpose of administering, disbursing and accounting for Bond Proceeds. Within said fund or funds, Bond principal will be distributed to the City as set forth in Section 5.4 of this Agreement.
- 5.2. <u>Investment of Bond Proceeds</u>. The County, through its Office of Financial Management, shall be responsible for placing investments of cash balances. The County will be responsible for arbitrage calculations and related actions required by the Code to ensure compliance with arbitrage regulations.
- 5.3. <u>Interest Earnings</u>. Interest earnings on the Principal Bond Proceeds will be collected and deposited in the Bond Redemption Fund to pay a portion of the principal of and interest on the bond debt.
- 5.4. Bond Proceeds Disbursement. Bond Proceeds will be disbursed to the City upon receipt and verification of properly completed requests for payment of Bond Proceeds by the King County Office of Open Space or its successor. The disbursements will be made in one of two ways: (1) by wire transfer up to five (5) days prior to the closing date upon receipt by the County of a completed request form, a copy of the signed purchase document, an estimated settlement statement, and electronic wiring instructions to the closing agent or City if so requested; or (2) by Automated Clearinghouse transmittal to the City for Qualified Reimbursement for expenditures for Capital Costs. The City shall provide a list of authorized individuals to certify the requests submitted to the County. The City will be responsible for the accuracy of the payment requests and the propriety and timeliness of its disbursements of the Bond Proceeds.

## 5.5. Disposition of Remaining Bond Proceeds.

- a. Bond Proceeds Reallocation Project Completion. If, upon completion of a Project, Bond Proceeds exist in excess of the amount necessary to reimburse the appropriate Capital Cost of a Project, then the City may propose to reallocate such excess Bond Proceeds to other existing Projects by providing a written request to the Office of Open Space and to the Committee and by submitting with such request a revised implementation schedule reflecting such proposed reallocation. The Committee shall have forty-five (45) days to review and recommend approval or disapproval to the Council of the City's proposed reallocation. The King County Executive shall submit the City proposal and the Committee recommendation to the King County Council which shall determine by ordinance whether or not to make such reallocation.
- b. <u>Bond Proceeds Reallocation Project Abandonment</u>. The City may abandon a Project only upon a determination and finding of fact through its normal legislative process that changes in conditions or new information developed after approval of funding of Projects prevent the practical accomplishment of the Project or clearly indicate that the Project would no longer best serve its intended purpose. If the City abandons a Project, and excess Bond Proceeds remain, the City may propose to reallocate such excess Bond Proceeds to other existing approved City Projects following the same procedure as set forth in 5.5.a. above and shall submit to the Committee a certified copy of its legislative action by which it made such determination of fact.
- c. Bond Proceeds Reallocation New Projects. The City may request to reallocate excess Bond Proceeds to a new Project if it makes a determination through its normal legislative processes that the proposed new Project is consistent with the purpose of the Bonds. If the City requests to reallocate excess Bond Proceeds to a new Project, the City shall forward its proposal to the Committee for its review and recommendation to the Council in the same manner as 5.5.a. above, and shall submit a certified copy of its legislative action by which it made such determination.
- 5.6. <u>Interim Financing</u>. Following the County's adoption of Ordinance 11068, the City may have issued short-term obligations in

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anticipation of reimbursement from Bond Proceeds to defray the same Capital Costs for which Bond Proceeds may be utilized. The payment of principal and interest upon such short-term obligations shall be a proper object of expenditure of Bond Proceeds to the extent that the rate of such interest is reasonable.

# ARTICLE VI. REPORTING REQUIREMENTS.

- the City shall provide the County and the Committee semi-annual reports describing Project Implementation status. Such reports shall cover six-month periods of April 1 through September 30 and October 1 through March 31 and shall be submitted no later than the twentieth working day following the end of the reporting period. All such reports shall be submitted to the County's Department of Parks, Planning and Resources Office of Open Space, or its successors.
- 6.2. Report Information. The reports shall contain the following information:
- a. An accounting of cash expenditures and encumbrances in support of the project, including a separate accounting for Administrative Costs;
- b. A work plan for each project showing the anticipated date by which City expects to achieve the following milestones in the acquisition process: (1) title report reviewed; (2) survey completed (if necessary); (3) environmental assessment completed (if necessary) (4) appraisal completed and reviewed; (5) first offer made; (6) purchase agreement executed; and (7) property acquired;
- c. The progress of City in accomplishing milestones for each Project and any changes to the time line; and
- d. Other relevant information requested by the County for the purpose of determining compliance with this Agreement.

# ARTICLE VII. TAX COVENANTS

- 7.1. <u>Preservation of Tax Exempt Status</u>. So long as such Bonds are outstanding or for twenty years after the first disbursement of Bond Proceeds, whichever is longer:
  - a. The City will not use or permit to be used any of the

Bond Proceeds or the property or facilities acquired, constructed, developed or improved as part of the Projects in such manner and shall not take or omit to take any other action as to cause the interest on the Bonds to be included in the gross income of the recipients thereof for purposes of federal income taxation.

- b. The City will provide certificates when and as required by the County's bond counsel, the Code or the Internal Revenue Service in order to establish or maintain the tax exempt status of interest on the Bonds.
- c. The City will comply with any requirements imposed by the Code in order to preserve the tax exempt status of interest on the Bonds. The City will cooperate in any audit by the Internal Revenue Service, including disclosure of any records, contracts and other materials required by the Internal Revenue Service in order to establish or preserve the Bonds' tax exempt status or as may be required by the Code.
- 7.2. Indemnification. If the Bonds become Taxable Bonds as a result of the acts or omissions of the City not approved in writing by the County, the City shall indemnify and hold the County, its officers, employees and agents, including bond counsel, harmless with respect to bond holders' claims and any costs attendant thereto, including any penalties and the County's attorneys' fees and costs in defending such claims.

### ARTICLE VIII. RESPONSIBILITIES OF COUNTY.

- 8.1. <u>Issuance of Bonds</u>. Subject to the terms of this Agreement and the Program Ordinances, the County will issue Bonds for the purposes set forth herein and in the Program Ordinances.
- 8.2. <u>Distribution of Bond Proceeds</u>. Distribution to the City of any Bond Proceeds is specifically conditioned upon execution by the City and the County of this Agreement.
- 8.3. <u>Future Support</u>. The County assumes no obligation for the future support of the Projects described herein, or any other projects, except as expressly set forth in this Agreement.

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# ARTICLE IX. GENERAL PROVISIONS

# 9.1. Hold Harmless and Indemnification.

- a. The County assumes no responsibility for the payment of any compensation, fees, wages, benefits or taxes to or on behalf of the City, its employees, contractors or others by reason of this Agreement. The City shall protect, indemnify and save harmless the County, its officers, agents and employees from any and all claims, costs and losses whatsoever occurring or resulting from (1) the City's failure to pay any compensation, wage, fee, benefit or tax, and (2) the supplying to the City of work, services, materials or supplies by City employees or agents or other contractors or suppliers in connection with or in support of performance of this Agreement.
- b. The City further agrees that it is financially responsible for and will repay the County all indicated amounts following an audit exception which occurs due to the negligent or intentional acts or failure for any reason to comply with the terms of this Agreement by the City, its officers, employees, agents or representatives.
- c. The City shall protect, defend, indemnify and save harmless the County from any and all costs, claims, judgments or awards of damages, including attorneys' fees, arising out of or in any way resulting from the Projects, including but not limited to the negligent acts or omissions of the City, its officers, employees or agents, but not including the solely negligent acts or omissions of the County, its officers, employees or agents. For purposes of this Agreement only, the City agrees to waive the immunity granted for industrial insurance claims pursuant to Washington statute chapter 52 to the extent necessary to extend its obligation under this subparagraph to any claim, demand, or cause of action brought by or on behalf of any employees, including judgments, awards and costs arising therefrom including attorneys' fees.
- 9.2. <u>Amendments or Modifications</u>. The parties reserve the right to amend or modify this Agreement. Such amendments or modifications must be by written instrument, signed by the parties and approved by the respective City and County Councils.

- 9.3. <u>Contract Waiver</u>. No waiver by either party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition, nor shall a waiver of any breach, be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement. No waiver shall be effective unless made in writing.
- 9.4. Notices. Any notice, consent, demand or other communication hereunder shall be in writing and shall be deemed to have been given if delivered in person or deposited in any United States Postal Service mail box, first class postage prepaid, or sent by registered or certified mail, return receipt requested, addressed to the party for whom it is intended as follows:
  - (1) To the City: City of Bothell
    Ms. Anne Pflug, Manager
    Bothell City Hall
    18305 101st Avenue NE
    Bothell, WA 98011
  - (2) To the County: King County Office of Open Space 1621 Smith Tower 506 Second Avenue Seattle, Washington 98104

with a copy to: Chief Financial Officer 400 King County Courthouse Seattle, Washington 98104

These titles and addresses may be changed by written notice to the other party pursuant to this provision.

- 9.5. Interpretation. This Agreement shall be interpreted according to and enforced under the laws of the State of Washington. The section and subsection captions of this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision in this Agreement.
- 9.6. <u>Separability</u>. Each provision of this Agreement is separable from all other provisions. In the event any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable for any reason, all remaining provisions will remain in full force and effect.
- 9.7. Entirety. This Agreement is a complete expression of the terms hereto and any oral representations or understandings not

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incorporated are excluded. This Agreement merges and supersedes all prior negotiations, representations, and agreements between the parties relating to the Bonds, Bond Proceeds or Projects and constitutes the entire Agreement between the parties. The parties recognize time is of the essence in the performance of the provisions of this Agreement.

IN WITNESS WHEREOF, authorized representatives of the parties hereto have signed their names in the spaces set forth below.

KING COUNTY

KING COUNTY EXECUTIVE

DATE: 5/17/94

ACTING UNDER AUTHORITY OF MOTION #92-02

CITY OF BOTHELL

By Chine Hofling

Its City Manager

DATE: 3-16-94

ACTING UNDER AUTHORITY OF Agenda Bill No. 94-35

Approved as to form:

Approved as to form:

NORM MALENG King County Prosecuting

Attorney:

city Attorney

CFT INTERLOCAL - Bothell

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DECEMBER 29, 1993

#### ATTACHMENT A

### APPROVED PROJECTS

#### Suburban Cities

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City	Project	Allocation
Auburn	Green River Access	\$ 300,000
Auburn	Olson Canyon / /	1,800,000
Bellevue	Meydenbauer Bay	2,500,000
Bothell	Burke Gilman/Sammamish	
<b>DU 1110111</b>	River Greenway	950,000
Duvall	Dougherty Farm	118,000
Federal Way	Sisters of Visitation	340,000
Federal Way	Fisher's Pond and	
rederar way	School Site No. 20	1,060,000
Issaquah	Tibbott Property (Tiger Mountain)	
Issaquah	Issaquah Creek - Johnson Property	4
Kent	Green River NREA	500,000
Kent	Upper Mill Creek Canyon	71,000
Kent	Riverview Park	236,000
Kirkland	Juanita Bay Park Expansion	200,000
Kirkland	Brink Park Expansion	1,200,000
L. Forest Pk	McAleer Creek OS Program	25,000
	Meadowbrook Farm	2,500,000
North Bend/ Snoqualmie	/ /	
Redmond	E. Lake Sammamish Waterfront Pk.	1,000,000
Renton	Cedar River Trail	1,800,000
Renton	Springbrook Trail	300,000
Woodinville	Woodinville Green Gateway	800,000

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## City of Seattle

Project	Allocation
North Beach Natural Area	\$ 137,700
Sunset Hill Greenbelt	329,400
Thornton Creek Additions:	
(Maple Creek, San Point Way, Little Brook)	900,000
Llandover Woods: 3rd NW and NW 145th	1,331,100
14043 - 32nd NE 1,260,900	
Fremont/Vemo	540,000
Burke-Gilman Greenway: Silver Cloud	272,700
Burke-Gilman Greenway: DNR	267,300
Burke Gilman Greenway: NW 85th & Sand Point Way	1,530,000
St. Mark's Greenbelt	264,600
Magnolia Greenbelt	188,100
Northeast Queen Anne Greenbelt Tip	709,200
MGM Eastlake	1,278,900
3001 East Madison	473,400
Madison McGilvra	450,000
Northeast Queen Anne Overlook	819,900
Duwamish Head Greenbelt	5,400,000
Pelly Place Natural Area	447,300
Arroyos Natural Area	248,400
Maple School Ravine Natural Area	281,700
Orchard Street Ravine Natural Area	270,900
Puget Creek	778,500
Unprogrammed Project Funding	2,020,000
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Shoqualmie Piver/Stillwater is a 140-acre project that includes 45 acres of kee simple acquisition and 95 acres of less than fee development rights. This project includes obtaining public access to the beach at the large river bend in the Northwest corner of the property (part of parcal "B" on the attached wap).

Intia Arden Reserve tract "H" includes a 21-acre upland parcel adjacent to Puget Sound in the Innis Arden neighborhood located south of the terminus of 15th Avenue Worthwest in Seatcle.

Special Condition: The county shall seek to obtain access rights on the tidelands adjacent to the 21 acre sits After purchase of this property, the parks division shall, through its normal master planning process, leek to provide access to the sits including parking, for county residents who live beyond the immediate adjoining neighborhood.

Three Forks addition is a multi-parcel inholding within the county's Three Forks Park along Reinig Road near Shoqualmie. The county shall seek to acquire as many of the tyelve partels as possible, with the highest proprity being the property along the western edge of the project boundary, adjacent to the Grockway marsh area.

Upper Bear Creek Conservation Area is a multi-property project area within which acquisition of fee simple and less than fee development rights will be purchased for ponservation purpases.

Special Condition: The county shall seek to acquire development hights around Paradise Lake and acreas to this lake as a first priority for acquisition in the identified project area.

Second Priority shall be acquisition of the former "Whitelook" property. Any property acquisitions beyond these two priority areas shall be reviewed and approved by the COC and county owners.

Lake Savyer is a 29.5 acre waterfront project located on the southwast short of Lake Sawyer in south King County. The county shall seek to acquire property that provides public access to the waterfront and the proposed Green to ledar regional trail.

#### BUBURBAN CITTES PROSECTS.

Green River Access is a 4.4-acrs project with approximately 610 feet of shoreline located adjacent to 4th Street Southeast on the Green River in the City of Auburn.

Special Condition: The city shall seek to acquire as much of the proposed project as possible, with a first priority of gaining public access from the street end at the northern project boundary.

Olson Canyon is a 60.5-acre project adjacent to the north end of Auburn Golf Course on Green River Road.

Special Condition: The City of Auburn shall ensure preservation of the historic character of the site, including the homestead and barn buildings, in conjunction with agency or other recognized historic preservation outtural resources authorities.

Maydenbauer Bay is a 4/10 of an acre site located on the shoreline of Lake Washington on Southeast Bellevue Place in the city of Bellevue.

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Sammemish River/Burke-Gilman Greenway (Bothell portion) is a 26.1-acre open space adjacent to the Burke Gilman Regional Trail and the Sammamish Slough on Bothell Way in Bothell. The project will purchase development rights on a portion of the "front nine" of the Wayne Golf Course, and will require continued public availability to the golf course at prices equivalent to publicly-owned golf courses in King County.

Special Condition: The City of Bothell shall ensure that the vegetation between the Burke Gilman Trail and the golf course is regularly pruned to ensure clear visibility to trail users of the open space from the entire length of the trail bordering the open space.

Dougherty Farm is a 22.6-acre open space in the Snoqualmie Valley Iccated on Northeast Cherry Valley Road just north of the present city limits of the City of Duvall.

Sisters of Visitation is an 11.7 acre site with approximately 605 feet of shoreline on Puget Sound. The site is located on Marine View Drive in Federal Way.

Special Condition: The portion of this site that contains the footprint of the existing building that will be used as a conference center is not eligible for CFT funding. Further, the City of Federal Way will ensure that the general public will have full, well-identified access to the grounds that are purchased with these conservation futures funds and that this property will not be for the exclusive use of any conference attendess or other users of the building located at the site.

Figher's Pond is a 11.5-acre project located on southwest 320th Street and 7th Avenue Southwest in Federal WAY.

School Sita No. 20 is a 10.3-acre project located on 15th Avenue Southeast in Federal Way.

Tibbett Property is an 13-acre site that lies at the entrance to Issaquah's Tradition Lake Park and the Tiger Mountain State Forest. The site is adjacent to Interstate 90 west of the Righ Point exit east of Issaquah.

Special Condition? It is anticipated that funding shortfalls in this project will be addressed by the State.

Johnson Property is a 1.4-acre property located in downtown Issaquah at the junction of the East Fork and main stem of Issaquan Creek.

Green River NREA is an approximately 270-acre site located adjacent to the Green River, south of South 212th Street, and adjacent to a proposed stormwater management and wetland enhancement basin facility currently owned by the City of Kent.

Upper Hill Creek Canyon is two parcels of land botaling 3.6 acres that are inholdings within Kent's Mill Creek Park.

Riverriew Park is a 11.3 acre project located along the east bank of the Green River, adjacent to SR 167 in Kent.

Special Condition: As a first priority, the City shall seek to acquire property between Hawley Road and the Green River, known as the "Baldwin" property. As a second priority, the City shall seek to acquire the parcels located between Hawley Road and SR 167.

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 Juanita Bay Fark Expension is a 1.3-acre parcel with 240 feet of shoreline on Lake Washington and is located to the north of existing Juanita Bay Park on 98th Avenue Northeast in Kirkland.

Brink Park Expansion is a .3-acre sits located on Lake Washington adjacent to the south end of Brink Park on Market Street in Kirkland.

Special Condition: If state IAC funding is secured for this project, unanticipated CFT funding surplus shall be reprogrammed unless needed to complete the Kirkland Juanita Bay Park Expansion project, identified above.

Acaleer Creek Open Space Program is a 1.1-acre parcel located on Perkins Way in the City of Lake Forest Park. The project contains shoreline along McAleer Creek.

Headowbrook Farm is a 410-acre farm located within the cities of North Bend and Snoqualmie on the Snoqualmie-North Bend Road and along the South fork of the Snoqualmie River. The cities of North Bend and Snoqualmie shall seek to acquire the properties identified as "Phase II" on the attached map.

Lake Sammamish Waterfront Park is a multi-parcel project with approximately 2500 feet of shoreline on Lake Sammamish and is located along East Lake Sammamish Parkway. This property is located within unincorporated King County, however, it would be owned and operated by the City of Redmond.

Special Condition: The City of Redmond shall aggressively pursue other sources of funding to complete this project.

Cadar River Trail is a City of Renton project that is 51.6 acres in size and is located along the Cadar River and Cadar River Regional Trail east of Interstate 405 in Renton.

Social Condition: The City of Renton will preserve at least half of the level area in the center of the site for open space uses consistent with the restrictions identified in Ordinance 10750. Any portion of this project site that is proposed for active recreation or other activities not in keeping with the funding requirements of the Regional Conservation Futures 1993 Acquisition Bond Program will not be eligible for funding.

springbrook Creek Trail is an 8.8-acre City of Renton project located on Talbot Road and the West Valley Highway (SR 167).

Woodinvilla Green Gateway is a T.7-acre project located in the City of Woodinville adjacent to the Sammamish Valley/Surke-Gilman Regional Trail, which is on the Sammamish River. The project is located on 191st Avenue NE and NE 175th Street.

Special Condition: The City shall seek to secure the necessary funds to acquire the entire proposed project area. Upon purchase of this site the City of Woodinville will change the configuration of existing parking on the site to be no more than 15% of the entire site. Should the City be successful in acquiring the school district property located to the east of the project area, within three years of the passage of this Motion, the City of Woodinville will eliminate all parking from the site in perpetuity.

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North Beach Natural Area is a 1,19-acre project located between Northwest 91st Place and Northwest 95th Place that includes a creek within a wooded ravine.

Sunset Hill Greenbelt is a 27.3-acre græenbelt located along Seaview Avenue Northwest adjacent to Shilshole Bay Marina.

Thornton Creek Watershed consists of three sites:

Sand Point Way, a 1.71-acre project located at the intersection of Sand Point Way Northeast and Northeast 95th Street;

Little Brook is a 1.14-acre multi-parcel project with approximately 1000 feet of stream and a wooded ravine. The project is located between Northeast 117th Street and Northeast 120th Street;

Maple Creek is a 4.54-acre wooded open space along Thornton Creek located east of 40th Avenue Northeast and Northeast 89th Street.

Llandover Woods: 3rd NW & NW 145th is a 9.54-acre wooded and grassy meadow site located just south of the northerly limits of Seattle at Northwest 143rd Street hear Northwest Culbertson Drive.

14943 32nd NZ is a .86-acre parcel located on 32nd avenue Northeast between Northeast 143rd Street and Northeast 140th Street. The project contains a meadow and a small stream.

Fremont/Vemo is a .2-acre undeveloced property located between Northwest 35th Street and North Canal Street.

Special Condition: The City is encouraged to explore alternative open space sites within the fremont community before acquiring this property.

Burke-Gilman Greenway: Silver Cloud is a .5-acre undeveloped area adjacent to the Burke Gilman Trail near 27th Avenue Northeast. The site is also proposed as a location for the daylighting of Rayenna Creek, which currently runs through a drainage pipe on the property.

Special Condition: As a first priority, the city shall seek to acquire the property along the eastern edge of the project boundary.

Burke-Gilman Greenway: DNR is a 3.12-acre section of the Burke Gilman Trail that is not in City of Seattle ownership. In addition to the trail, the property contains a natural buffer to the trail. The site is located east of 40th Avenue Northeast and west of Sand Point Way Northeast.

Burke Gilman Greenway: Northeast 85th and Sand Point Way is a 7.7 acre wooded ravine property located adjacent to the Eurke-Gilman Trail near Sand Point Way and Northeast 85th Street.

Bt. Mark's Greenbelt is an 8.7-acre wooded open space on the west side of Capital Hill south of Broadway east and north of East Highland Drive.

Magnolia Greenbelt is a .51-acre wooded hillside near the Magnolia viaduct at Amherst Avenue West and is part of the larger Magnolia Greenbelt under public ownership.

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Madison McGilvra is a 3.88 acre multi-parcel project. The project area borders Lake Washington at the entrance to the Montlake out at East McGilvra Street, east of 17th Avenue East.

Special Condition: The City shall seek to acquire as many of the parcels as possible, with highest priority being acquisition of public waterfront access. The city shall aggressively pursue other sources of funding, including city resources, to complete this project.

Northeast Queen Anne Greenbelt Tip is a .5-acre parcel that serves as a northern terminus to the Northeast Queen Anne Greenbelt The site is located between Dexter Avenue and 4th Avenue North.

MGM Eastlake is a .51 acre project with a view of Lake Union and a serves as an addition to an Clastead Park and a P-Patch. The project is located west of Eastlake Avenue East.

1001 East Madison is a .28 acre wooded sloping hillside in Madison Valley of Central Seattle and is located at the Intersection of East Madison Street and East Merger Street.

Northeast Queen Anne Overlook is a .68-acre open space property that provides a panoramic view east over take Union and the Cascades, Lake Washington and Mount Rainier located at the intersection of Blaine Street and Taylor Avenue North.

Duwamish Head Greenbelt is a 5,26-acre project on the east facing slope of the Duwamish River. Priority acquisition properties are located on Fauntierry Avenue Southwest just east of Admiral Way. A second priority acquisition site is located adjacent to Lotus Avenue and Harbor Avenue Southwest-

Special Condition: The City's highest acquisition priority shall be parcels "A", "B", "C" and "D" on the actached map. If additional funds are available, parcels D1, D2, D3 and E3 will be the second priority for acquisition.

Pelity Place Natural Area is a .29-acre project located east of Murray Avenue southwest at the entrance to a larger wooded ravine.

Arroyos Natural Area is a 6.85-acre wooded hillside site above Puget Sound along Marine View Drive in south Seattle.

Maple School Ravine Natural Area is a 2.19-acre multi-parcel linear wooded greenbeit located adjacent to 19th Avenue South between South Ducille Street and South Juneau Street. . .

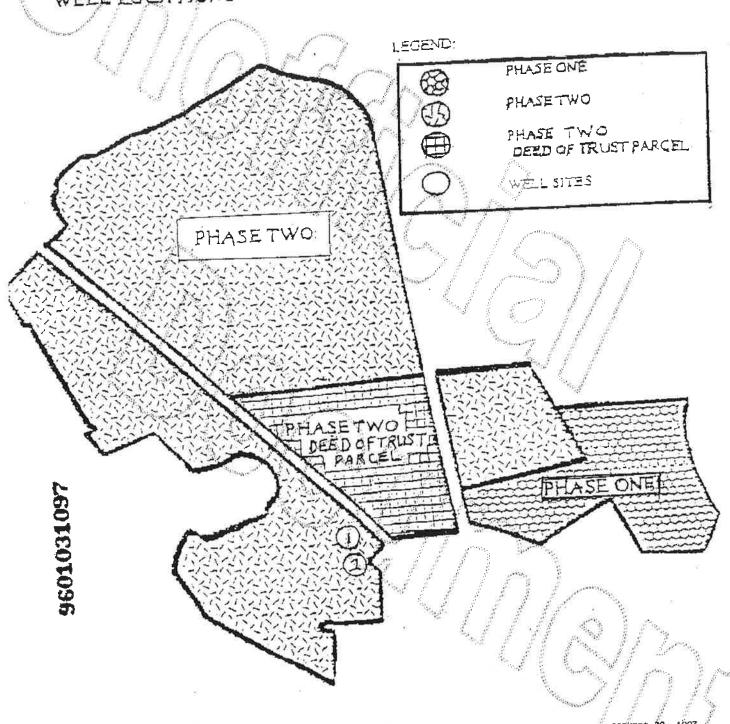
Orchard Street Ravine Natural Area is a 1.51-acre project consisting of 2 parcels that are part of a shallow, undeveloped, wooded ravine adjacent to southwest prehard Street.

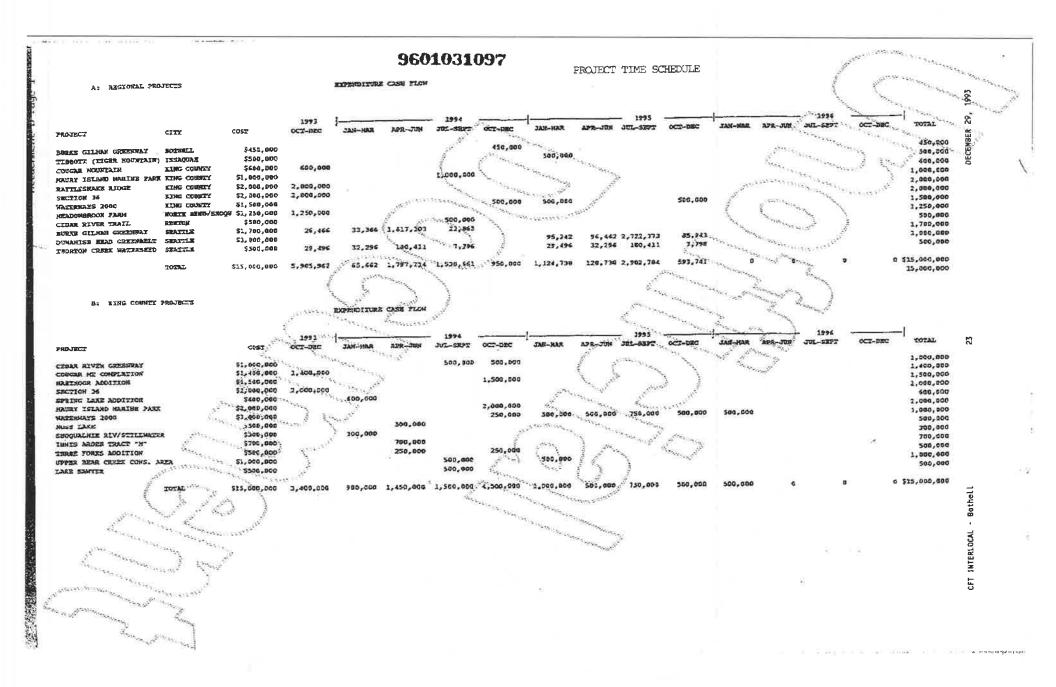
Puget Creek Natural Area is a 4,68 acre multi-parcel project located adjacent to 19th Avenue Southwest between Southwest Brandon Street and Southwest Juneau Street. The natural area contains or borders a creek that is linked to Puget Rark

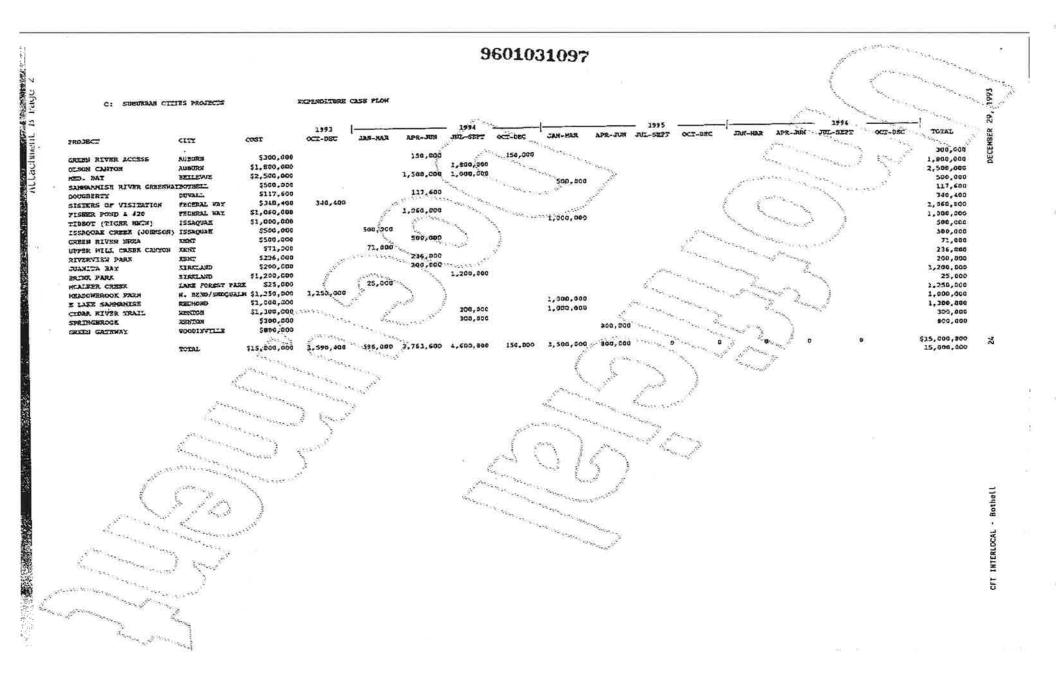
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## MAP IDENTIFYING: PURCHASE PHASES WELL LOCATIONS







#### ADDITIONAL SPECIAL CONDITIONS

- 1. No more than \$977,000 in general administrative costs (including all negotiation, general management and indirect expenses) may be reimbursed from Project Funds allocated to the City of Seattle. Administrative costs attributable to King County's oversight of the project, however, may be reimbursed from such project funds.
- 2. No more than the general administrative costs (including all negotiation, general management and indirect expenses) identified in individual project applications may be reimbursed from suburban Project Funds as follows:

	~~ /_/./. #//>-	Administrative
City	Project	Costs
Auburn	Green River Access	\$ -0-
Auburn	Olson Canyon	* <del>-</del> 0-
Bellevue	Meydenbauer Bay	30,000
Bothell	Burke Gilman/Sammamish	
plan.	River Greenway	8,000
Duvall	Dougherty Farm	5,000
Federal Way	Sisters of Visitation	30,000
Federal Way	Fisher's Pond and	55,000
	School Site No. 20	
Issaquah	Tibbott Property (Tiger Mountain)	5,000
Issaquah /	Issaquah Creek - Johnson Property	5,000
Kent	Green River NREA	-0+
Kent /	Upper Mill Creek Canyon	2,000
Kent	Riverview Park	್. −0−
Kirkland /	Juanita Bay Park Expansion	<del>-</del> 0-
Kirkland	Brink Park Expansion	-0-
L.Forest Pk	McAleer Creek OS Program	-0-
North Bend/	Meadowbrook Farm	-0-
Snoqualmie		
Redmond	E. Lake Sammamish Waterfront Pk.	20,000
Renton	Cedar River Trail	25,000
Renton	Springbrook Trail	18,000
Woodinville	Woodinville Green Gateway	1,440

Administrative costs attributable to King County's oversight of the project, however, may be reimbursed from such project funds.

3. Seattle may reprogram funds from its regional or local unprogrammed funding projects to other projects funded in this agreement after reporting such reprogramming to the Committee and the County Council.

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4. Prior to disbursement of any Project Funds hereunder, Seattle shall negotiate in good faith for the conveyance of property needed by King County to complete its 1989 King County Open Space Bond Project or its projects under the Program. The projects include:

Shoreline Interurban Trail (City Light Right-of-Way)

Soos Creek Trail Extension North (Seattle Water Department Right-of-Way)

King County also agrees to negotiate the conveyance of properties King County owns that the City needs to complete its projects under the 1989 King County Open Space Bond Project or its projects under the Program.

5. Suburban Cities shall provide matching funds to each project as follows:

<u>City</u>	Project /	Matching Funds
Auburn	Green River Access	\$ <b>-</b> 0−
Auburn	Olson Canyon	-0-
Bellevue	Meydenbauer Bay	500,000
Bothell **	Burke Gilman/Sammamish	-0-
	River Greenway	Same to the
Duvall	Dougherty Farm	82,000
Federal Way	Sisters of Visitation	405,000
Federal Way	Fisher's Pond and	-0-
7 - 1	School Site No. 20	and the state of t
Issaquah 🥖	Tibbott Property (Tiger Mountain)	-0-
Issaquah	Issaquah Creek - Johnson Property	-0-
Kent	Green River NREA	3,400,000
Kent	Upper Mill Creek Canyon	73,500
Kent 😘	Riverview Park	-0-
Kirkland	Juanita Bay Park Expansion	530,000*
Kirkland	Brink Park Expansion	225,000
L. Forest Pk	McAleer Creek OS Program	-0-
North Bend/ Snoqualmie	Meadowbrook Farm	-0-
Redmond	E. Lake Sammamish Waterfront Pk.	-0-
Renton	Cedar River Trail	702,249
Renton	Springbrook Trail	65,388
Woodinville	Woodinville Green Gateway	-0-

#### \* Includes METRO SIF

 Snoqualmie and North Bend shall be jointly and severally liable for performing of City obligations under their agreement with King County.

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## EXHIBIT C BACK NINE LEGAL DESCRIPTION

The land is situated in the county of King, state of Washington, and described as follows:

PARCEL B:

That portion of the south half of the southeast quarter of Section 7, Township 26 North, Range 5 East, W.M., in King County, Washington, described as follows:

Beginning at the southeast corner of said subdivision; thence north 2°33'39" east along the east line of said subdivision to a point where the said east line intersects with the southerly boundary of that portion of the south half of the southeast quarter of Section 7 heretofore conveyed to the City of Seattle for a water main by deed recorded under Recording Number 5040174, and the Tolt River Pipe Line Right-of-Way as established by Ordinance No. 86134 of the City of Seattle; thence northwesterly along said southerly boundary to the centerline of the Sammamish River; thence southwesterly along said centerline of the Sammamish River to the east line of the Bothell-Kirkland Road "96th Avenue Northeast"; thence southerly along said east line to the south line of said subdivision; thence easterly along said south line to the point of beginning; EXCEPT that portion as condemned in King County Superior Court Cause No. 514489 for Tolt River Pipe Line Right-of-Way;

AND that portion of the north 425.54 feet of the northeast quarter of the northeast quarter of Section 18, Township 26 North, Range 5 East, W.M., in King County, Washington, lying easterly of the easterly line of the Bothell-Kirkland Road "96th Avenue Northeast"; EXCEPT the following described tract:

Beginning at a point 804.24 feet west and 129.54 feet south of the northeast corner of said subdivision; thence west 560 feet; thence south 74°07'20" west 93.93 feet to the easterly margin of said Bothell-Kirkland Road; thence southerly along said easterly margin to the south line of the said north 425.54 feet of said subdivision; thence east 526.56 feet; thence north 296 feet to the point of beginning.

(legal description, continued)

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EXHIBIT C. LEGAL DESCRIPTION, continued:

#### PARCEL C:

That portion of the northwest quarter of the northwest quarter of Section 17, Township 26 North, Range 5 East, W.M., in King County, Washington, described as follows:

Beginning at the northwest corner of said subdivision; thence south 0°07:40" east along the west line thereof 641.04 feet; thence north 89°14'50" east, 387.47 feet; thence northeasterly along a curve to the right having a radius of 467.31 feet, an arc distance of 159.93 feet to a point of reverse curve; thence along a curve to the left having a radius of 230 feet, an arc distance of 300.93 feet to a point of reverse curve; thence along a curve to the right having a radius of 430 feet, an arc distance of 184.12 feet, to a point of compound curve; thence along a curve to the right having a radius of 50 feet, an arc distance of 73.10 feet, to a point of tangency; thence north 89°22'00" east 69.56 feet; thence north 0938'00" west 20 feet to the north line of said subdivision; thence south 89°22'00" west along said north line 633.76 feet to the point of beginning; EXCEPT portion conveyed to the City of Seattle for water main by deed recorded under Recording Number 5040174; AND EXCEPT portion condemned in King County Superior Court Cause No. 514489 for Tolt River Pipe Line Right-of-Way.

#### PARCEL D:

That portion of the northeast quarter of the northeast quarter of Section 18, Township 26 North, Range 5 East, W.M., in King County, Washington, described as follows:

Beginning on the easterly line of the Bothell-Kirkland Highway at a point 436 feet (measured along a line parallel with the easterly line of said subdivision) northerly of the southerly line of said subdivision; thence northeasterly to a point on the easterly line of said subdivision, a distance of 586 feet northerly of the southeast corner thereof;

thence northerly along said easterly line 320.01 feet; thence westerly parallel with the southerly line of said subdivision, 1,333.51 feet to a stone monument on the easterly line of said Highway;

(legal description, continued)

Page 2 of 3

EXHIBIT C LEGAL DESCRIPTION, continued:

thence southerly along said easterly line to the point of beginning;
EXCEPTING THEREFROM the following described tract:

Beginning at a point of beginning above described, which is the southwest corner of the above described tract; thence northeasterly along the southerly line of the above described tract, a distance of 234 feet; thence northerly at right angles to said southerly line a distance of 183 feet; thence southwesterly a distance of 332 feet, more or less, (measured along a line parallel with the southerly line of the above described property) to the easterly line of the Bothell-Kirkland Highway; thence southeasterly along said easterly line of the Bothell-Kirkland Highway to the point of beginning.

#### PARCEL É:

Beginning at a point 804.24 feet west and 129.54 feet south of the northeast corner of Section 18, Township 26 North, Range 5 East, W.M., in King County, Washington; thence west 560 feet; thence south 74°07'20" west 93.63 feet to the easterly margin of County Road; thence southerly along said easterly margin of said County Road to a point 425.54 feet south of the Section line; thence east 526.56 feet; thence north 296 feet to the point of beginning; EXCEPT that portion as deeded to the City of Bothell, as recorded under King County Recording Number 8912121430.

#### PARCEL F:

NUMBER OF STREET STREET, STREET STREET, STREET

That portion of the south half of the southeast quarter of Section 7, Township 26 North, Range 5 East, W.M., in King County, Washington, lying southerly of the Bothell Highway, lying northerly of the Northern Pacific Railroad Company Right-of-Way, lying easterly of the southerly prolongation of the Bothell City Limits as established by Bothell Ordinance No. 571 and lying westerly of the westerly margin of Secondary State Highway No. 2-A, "Bothell-Kirkland Highway"; EXCEPT that portion deeded to the City of Bothell, a municipal corporation, for the Wayne Bridge Replacement Right-of-Way, under King County Recording Number 8811210335.

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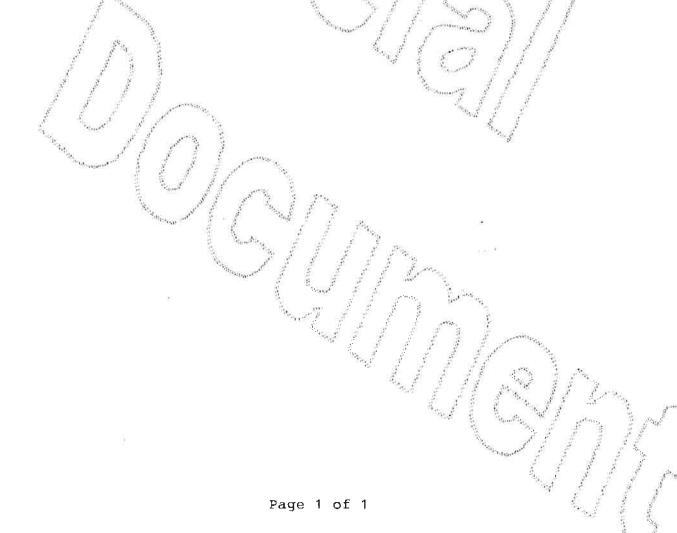
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# EXHIBIT D VIEW CORRIDOR DESCRIPTION

Per the Conservation Easement Agreement between the City of Bothell and the property owners of Wayne Golf Course, the City shall maintain (trimming only), at City expense, the vegetation along the Burke Gilman Trail (Burlington Northern Railroad right-of-way) along the Golf Course property line. This maintenance shall consist of annual trimming to ensure visibility to trail users of the open space environment along the trail as described below. It is not the intent of this maintenance trimming to secure unrestricted or unlimited views along this corridor by removing all or most of the existing vegetation. Rather, it is the intent to create view "windows" as City staff and Property owner determines to be feasible and to maintain trail and golf course user safety and compatibility.

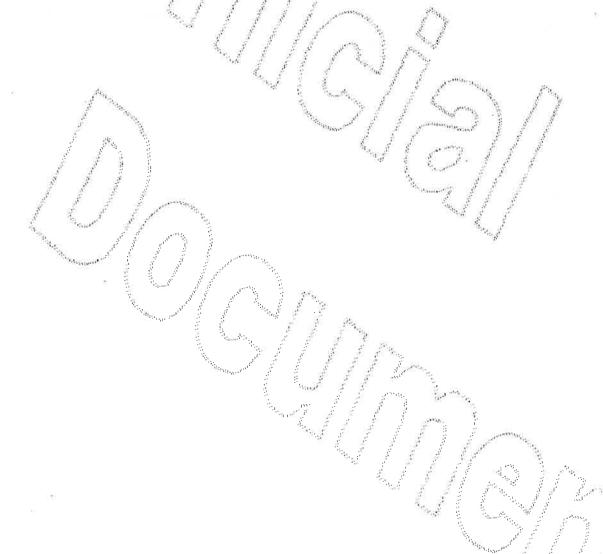
Maintenance of this View Corridor shall be along the following described line:

Said line being that portion of Parcel "A" (Front Nine of Golf Course) described in Exhibit "A" lying along the Burlington Northern Railroad right-of-way.



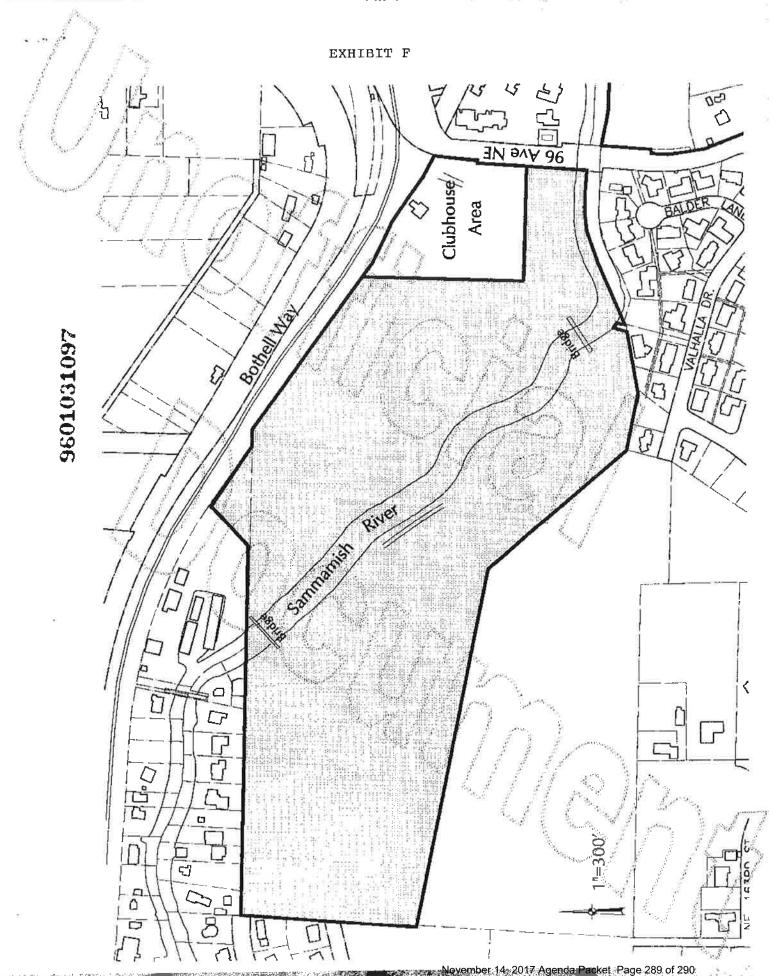
# EXHIBIT E Clubhouse Legal Description Wayne Golf Course

The North 900 feet of the East 470 feet of the Southwest Quarter of the Southeast Quarter of Section 7, Township 26 North, Range 5 East, W.M., in King County, Washington, lying southerly of Burlington Northern Railroad and the Tolt River Pipeline rights-of-way and lying westerly of 96th Avenue NE right-of-way.



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